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POLITICAL SCIENCE QUARTERLY.

NATIONAL SOVEREIGNTY.

THE question whether sovereignty exists in the United States, and, if so, of its location, is one that is equally important and perplexing. Is there a sovereign at all amongst us? Is the sovereignty belonging to it a divided one, existing in the several states? Is it to be found in some form, undivided, in the states united? Or, finally, is the sovereignty in the people of the United States? Other alternatives might be presented, but these are the most familiar. These are also the most profitable topics of discussion. I shall not dwell upon the first question, nor except incidentally upon the second, but what I have to say will be confined mainly to the other two. As a foundation for the discussion of these questions, I shall assume that somewhere in the United States there exists, as fully as in any government, that power which political writers call sovereignty. To locate sovereignty amongst us, on that hypothesis, — *hic labor, hoc opus est.*

The question: Where does sovereignty reside? has arisen in all governments inclined to be liberal or popular, especially during the past century; and it has given rise to two principal schools. The first is that of the "analytical jurists," whose leading authorities in England are Hobbes, Bentham, Austin and Maine, and in our country Mr. John C. Hurd. This school attributes sovereign powers to a person, or combination of persons, forming a part of the people, as organized in a political community. The second school is that which locates sovereignty in the People, — spelled, as Maine sneeringly observes, with a capital P, — that is, in the entire commonwealth, as a

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corporate unit. To this latter school, as the American adherents of the former admit, belong nearly all the writers, judges and lawyers who have expressed opinions on the subject in the United States. To a full comprehension of these two schools, a brief statement of their origin and history may be necessary.

In the early history of nations sovereignty was not associated with a definite portion of the earth's surface. "The fundamental conception was, that the territory belonged to the tribe," which was often a nomadic horde, "and that the sovereign was the sovereign of the tribe. The older ideas are reflected in the titles of the earlier monarchs, — *Rex Anglorum, Rex Francorum, Rex Scotorum, etc.*"[1] When the earlier monarchies became transformed by the introduction of feudal principles and by the settlement of the various peoples upon definite domains, the conception of sovereignty was changed by attributing it to the feudal chieftain, or king, conceived as the proprietor of the soil, and as such possessed of sovereign authority over his feudal subordinates. As Maine says: "The feudalization of Europe had to be completed, before it was possible that sovereignty could be associated with a definite portion of the soil"; and he adds, very significantly, that "in the long run sovereignty came always to be associated with the last stage of this process" of feudalization.[2] It is to be noted that the sovereign of the tribe and the sovereign of the territory were both monarchs; the one by virtue of his tribal headship, and the other by virtue of his feudal lordship. Accordingly, in the middle ages and afterwards, the entire conception of sovereignty and of its location in the state was feudal; the monarch was a feudal chieftain, and his subjects, according to feudal principles, were simply tenants under him of their personal and property rights. Such the European monarchies continued to be until the age of revolutions arrived. In the eighteenth century there arose a group of wholly new political conceptions; the pyramid of government, instead of standing on its apex, on a single person or a few persons in the community, was made to rest upon its broad

[1] Maine, International Law, pp. 56, 57; Ancient Law, pp. 102, 103.
[2] International Law, *ubi supra*.

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foundation, the people; and most modern governments, both at home and abroad, which have been at all influenced by the liberalizing tendencies of the age, have accepted the idea of basing upon the people, more or less completely and directly, the entire system of their political institutions.

Respecting this transformation and its effects, Mr. Maine says:

> The states of Europe are now regulated by political institutions answering to the various stages of the transition from the old view that "rulers are presumably wise and good, the rightful rulers and guides of the whole population," to the newer view, that "the ruler is the agent and servant, and the subject the wise and good master, who is obliged to delegate his power to the so-called ruler because, being a multitude, he cannot use it himself." Russia and Turkey are the only European states which completely reject the theory that governments hold their powers by delegation from the community, the word "community" being somewhat vaguely understood, but tending more and more to mean at least the whole of the males of full age living within certain territorial limits. This theory, which is known on the Continent as the theory of national sovereignty, has been fully accepted in France, Italy, Spain, Portugal, Holland, Belgium, Greece and the Scandinavian states. In Germany it has been repeatedly repudiated by the Emperor and his powerful minister, but it is to a very great extent acted upon. England, as is not unusual with her, stands by herself. There is no country in which the newer view of government is more thoroughly applied to practice, but almost all the language of the law and constitution is still accommodated to the older ideas concerning the relation of ruler and subject.[1]

Nevertheless, Mr. Maine accepts, though not without protest against parts of it, the view of sovereignty propounded by the analytical jurist, Austin. He traces that view to Hobbes, to whose idea of sovereignty, he says, Bentham and Austin have made no material addition, and whose method of reasoning he pronounces more scientific than theirs.[2] On the other hand, the writer whose authority has done most to spread the more modern doctrine of national or popular sovereignty (though he was not the first to propound it) is Rousseau. Both Hobbes and Rousseau imagined government to be founded originally in compact, — a

[1] Maine, Popular Government, pp. 7, 8.
[2] Early History of Institutions, pp. 354–356.

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notion which has been thoroughly exploded, — but beyond that, and in regard to the location of sovereignty and to the powers and functions of government, they were as wide as the poles asunder. Hobbes taught that, government once established and the sovereign declared by the consent of the people, absolute power over life and limb, over property and liberty, became vested in the sovereign, or king; while Rousseau imputed sovereignty, with all rightful powers of control, to the people, or nation. According to Hobbes, the compact between people and sovereign was indissoluble for any cause whatever; according to Rousseau, that compact could be dissolved when necessary to protect or to secure the rights of the people.

Now in taking position in respect to these conflicting theories, writers and politicians are naturally more or less governed by their prepossessions. They seek to explain, to justify, to reform, to discredit or to overthrow the institutions under which they live, to which they are accustomed, and on whose maintenance or subversion depend, as they conceive, their own or their nation's interests. Thus, although the institutions under which the analytical jurists have lived, have of late generally inclined in practice, as Maine says, to the doctrine of national sovereignty, those writers have themselves, almost without exception, adhered to the feudal theory ingrained in their institutions at their inception. On the other hand, American writers, prepossessed doubtless by the theory of their constitution and the constant practice of their governments, teach almost unanimously the doctrine of national sovereignty. There are a few exceptions. Of these the most conspicuous and able is Mr. John C. Hurd, who has written a large volume mainly to discredit that doctrine.[1] Following him, Mr. Irving B. Richman has lately published an article in the *Atlantic Monthly*, entitled "Law and Political Fact in the United States," taking substantially the same ground as Mr. Hurd.[2] The doctrine propounded by these writers is that sovereignty is a fact, and not a law or a right; that popular sovereignty is not a fact, but a

[1] The Theory of Our National Existence.

[2] *Atlantic Monthly*, August, 1889.

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fancy, or a metaphysical hypothesis founded on the social compact theory or on the loose phraseology of our constitutions; and that a sovereignty of law or of a constitution, or a sovereignty based on the provisions of either, is an absurdity. It is not important here either to admit or deny the truth of these propositions, which I shall consider briefly further on.

As a basis for the discussion of such of the questions as I intend to consider, I will cite Mr. Austin's definition of sovereignty. He says:

> The superiority which is styled sovereignty, and the independent political society which sovereignty implies, is distinguished from other superiority, and from other society, by the following marks or characters:
>
> 1. The *bulk* of the given society are in a habit of obedience or submission to a *determinate* and *common* superior, let that common superior be a certain individual person, or a certain body or aggregate of individual persons.
>
> 2. That certain individual, or that certain body of individuals, is *not* in a habit of obedience to a determinate human superior. . . .
>
> Or, the notions of sovereignty and independent political society may be expressed concisely thus: If a *determinate* human superior, not in a habit of obedience to a like superior, receive *habitual* obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.[1]

With a proper definition of the word "determinate," little fault could be found with this definition; and I might add that, with a proper definition of the word "fact," so much insisted upon by Mr. Hurd, the justice of his contention that sovereignty is a "fact," and not a "law" or a "right," may be readily conceded.

On the other hand, the American conception of sovereignty is thus stated by Dr. Lieber:

> Sovereignty is the self-sufficient source of all power from which all specific powers are derived. It can dwell, therefore, according to the views of freemen, with society, the nation only.[2]

[1] The Province of Jurisprudence Determined, vol. i, p. 170.

[2] Civil Liberty and Self Government, p. 156. Compare James Wilson, Law Lectures, vol. i, chap. 2.

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Were it desirable to rest the whole question upon a single authority or opinion, I should go no further; for of all political writers, entitled to speak for the freemen of the United States, none, probably, carries with him so great weight as Dr. Lieber.

It will be observed that this definition differs from that propounded by Austin and his school, mainly in its location of sovereignty definitely in the nation, which with us can only mean the people of the United States; while that of Austin vests it, rather indefinitely, in some "determinate superior," consisting of one person or a combination of persons in the community. Perhaps it may not be important to show that this definition, slightly modified, not in its language, but in its construction, would be no less applicable or acceptable here than in the feudal monarchies of Europe, but I do not despair of establishing that proposition. Nor will it be at all difficult to demonstrate that the sovereignty of the people, in the American sense, is a *fact;* that it is not a *law* or a *right;* and that, notwithstanding some loose phraseology used occasionally by uncritical judges and lawyers, nobody ever supposed it to be a law or a right, though doubtless it is philosophically and actually the basis of law, and is constantly, in its exercise, modified by those moral considerations upon which rest all just views of right. As the two points, that the people, the supposed American sovereign, is *indeterminate* and so not conformable to Austin's definition of a sovereign, and that popular sovereignty is not a *fact*, but a fancy of speculative writers, constitute, so far as I am aware, the principal objections to the doctrine generally received in America, let us briefly consider those points.

I.

What is meant by a determinate body of persons? Obviously not that the individuals constituting it are registered by name and residence, so that one seeking to consult them can readily find them out, nor that they are so few as to be easily numbered

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or to be able to meet and act together. In short, it is not meant that the persons composing the sovereign are known as individuals, so that the propriety of their individual action may be passed upon; it is meant only that the body claiming or asserted to be the source of authority may be identified. The persons who make up the body may be many or few; but when the body is recognized as a sovereign body, its individual members are not subject to scrutiny by outsiders, but only by their own associates, as to the validity of their action or the rightfulness of their claim of membership. Hence it clearly does not matter how few or how many individuals constitute the sovereign body. A body consisting of fifty millions of individuals may be as determinate as if it consisted of a thousand or of a hundred persons, or of one person. In fact, the people of the United States, for example, is a more clearly and easily determined body than would be the sovereign placed over us by Mr. Austin. He says:

> I believe that the sovereign of each of the states, and also of the larger state arising from the Federal Union, resides in the states' governments, *as forming one aggregate body;* meaning by a state's government, not its ordinary legislature, but the body of its citizens which appoints its ordinary legislature, and which, the Union apart, is properly sovereign therein.[1]

That means that amongst us the state electorates united constitute the sovereign body of each state, considered independently of the Union, as well as that of the Union — a doctrine which would be repudiated as vigorously by our states-rights politicians who preach the doctrine of state sovereignty, as by those public men who believe in the sovereignty of the people of the United States. It may even be claimed that such a complex aggregate is not more but less determinate than the larger single aggregate called the people. Is not the whole more determinate than any aggregate composed of minor aggregates of its various constituents?

But, it will be said, the sovereign of Austin acts as such visibly, and so is more determinate as being recognizable by any one with eyes to see; whereas the sovereign imagined by the

[1] Province of Jurisprudence Determined, vol. i, p. 222.

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advocates of popular sovereignty, being, according to Mr. Hurd, "a metaphysical hypothesis generated out of the social-compact theory,"[1] is not visible, and never acts politically at all. It would strike the average American citizen as preposterous to claim that the people of the United States never acts politically because not every member of that body is a voter, or because not every voter goes to the polls. But conceding for the present purpose that the people acts only indirectly, by opinion and by influence exerted upon the electorate or other representatives of the sovereign, it is nevertheless true that it virtually governs both the states and the Union, and that the action of the supposed Austinian sovereign, the state electorates united, in those proceedings in which it seems visibly to exercise sovereign powers, only virtually does so. The Austinian sovereign acts only by a majority, never in fact by its total membership, and so the action taken is but virtually that of the entire electorate; for, as Maine says: "Familiar to us as is the practice of taking the opinion of a majority as the opinion of an entire group, and natural as it seems, nothing can be more artificial."[2] It is only by a tacit convention, in representative governments, that a majority can act for the whole; so that when only a majority has acted it is but virtually the action of the whole. By a similar convention, when a majority of the electorate has taken a particular action, it is virtually the action of the sovereign body to which the acting electors belong. We know this, because when the true sovereign has spoken — at public meetings, by the press or by personal argument or solicitation — the electorate, when it acts, either registers the behests of the people or ceases betimes further to represent them. As a nod from the master of a vessel to a subordinate is as much an act of government as the furling of a sail or the shifting of the helm, so the pressure of public opinion consciously brought to bear upon the electorate, although inarticulate, is a clear and legitimate exercise of sovereign power.

Mr. Maine, describing the qualities necessary to render the

[1] The Theory of Our National Existence, p. 114.
[2] Early History of Institutions, p. 352.

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sovereign determinate, says: "If he is not a single person, he must be a number of persons capable of acting in a corporate or collegiate capacity;" and he adds: "This part of the definition is absolutely necessary, since the sovereign must effect his exertions of power, must issue his orders, by a definite exercise of his will."[1] But "acting in a corporate or collegiate capacity" cannot mean acting as a single body, actually collected together; for however the sovereign may act in other states, the sovereign attributed to us never has so acted and never can so act. Maine's dictum can only mean that its action shall be that of the body, and not that of the individuals composing it; it must be corporate action. The reason given why that is necessary supposes, what certainly is not universally true, that the action of the sovereign body must be taken in writing, or in some form capable of official authentication; and what is not universally true may be universally untrue. As a matter of fact, it is no more true that the ocean cannot rise and sweep away the puny works of man, without formal notice to him, than that the people cannot bring about political changes without the issuance of formal orders.

But suppose that, in order to be determinate — and therefore, according to the definition of Austin, to be sovereign — not only the body as a unit but the individuals composing it must be so, then I say the definition is as applicable to the people as to a sovereign body of one or a few persons. The only difference is that the census in the former case is more difficult to take, as being more extensive than in the latter. Let us remember that the purpose of actually ascertaining the individuals constituting the sovereign must be, not to determine if the voice of the body speaking be that of the sovereign, but merely to verify the citizenship or the right of domicil of such individuals, and that such authentication has no relation to the corporate action of the sovereign body itself; then if, as I have intimated, that body is determinate, all just requisites to the existence of sovereignty, according to the definition of Austin, will have been complied with, so far as relates to the action

[1] Early History of Institutions, p. 351.

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of the sovereign. In ninety-nine cases in every hundred the action of the nation as the sovereign will be taken through the states' electorates as its ministers. This truth once recognized, the sovereign which virtually appoints or accredits those ministers will be as determinate, for all purposes of ascertainment or verification of its action or of its orders, thought necessary by Mr. Maine, as if those ministers were acting as a sovereign body themselves. In the remaining case, the action of the sovereign will be manifested by some organic movement of the nation, conforming to no rule, but as unmistakable as that of a storm at sea.

Perhaps there is no better way to determine which of the two views of sovereignty here presented is the true one, than to seek, among the several persons or bodies thought to be entitled to claim that power in the United States, one which will answer all the conditions, if possible, of Austin's definition, but which at any rate will stand the test of fact and of history. Taking into consideration both the Union and the states, it is conceived that there can be but the following list of candidates for sovereign honors:

1. The nation, *i.e.* the people of the United States, acting either *in solido*, or in groups by states.
2. The Congress of the United States.
3. The Supreme Court of the United States.
4. The President of the United States.
5. The electorates of the states, taken together, in a collegiate capacity.
6. The state legislatures, severally considered.
7. The supreme courts of the several states.
8. The governors of the several states.
9. The electorates of the several states.

Now every one of these persons, or bodies of persons, answers, I maintain, the test of determinateness. But Austin's definition requires also certain habits of obedience to the supposed sovereign on the part of the bulk of a community political and independent, and the absence of certain habits of obedience on the part of the supposed sovereign to a determinate human su-

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perior. Only one of these nine supposed sovereigns answers both sets of conditions; namely, the first, the nation. Every one of them found within separate state limits, and numbered 6, 7, 8 and 9, whatever may be said of its habitually receiving obedience from the bulk of some political community, certainly yields habitual obedience to the people of the United States, as represented by the various national organs, numbered 2, 3 and 4. These national organs (2, 3 and 4) also, while they severally and in their appointed spheres of action receive habitual obedience from the other six, either as individuals or as organized political bodies, habitually and constantly yield obedience to the nation. Finally, while the individuals who compose the nation, the people of the United States, are amenable to the jurisdiction of their respective state authorities (6, 7, 8 and 9) and to the national organs (2, 3 and 4) yet as an organized political community, free and independent, this body renders habitual obedience to no one of the eight other organs, but controls them all, each of them rendering habitual and ready obedience to it.

Mr. Austin locates sovereignty, amongst us, in the fifth organ described above — an organ imagined by him, but never, probably, by any one but him, to exist for that purpose — "the states' governments, *as forming one aggregate body*," which he afterwards explains to be the aggregate of the electorates of the several states. In this aggregate, as he believes, "the sovereignty of each of the states, and also of the larger state arising from the Federal Union, resides." While, doubtless, as both Maine and Hurd teach, the beliefs and prepossessions of the subject have no decisive bearing on the question of who is, and who is not, his sovereign, they are facts tending to determine the larger fact of the location of sovereignty; and I venture to repeat what I said above, that no one would deny the existence of the Austinian sovereign, or repudiate his authority or jurisdiction, more energetically than our state-sovereignty men. And yet I admit, and maintain, that the aggregate referred to is, from the point of view of the advocates of national sovereignty, among the proximate representatives of that sovereign,

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and as such charged by it with the exercise of such sovereign powers as bear upon national concerns. I say "among the proximate representatives," because there are others in the several states invested with the exercise of sovereign powers mainly in local matters relating to the states. From these two classes of proximate representatives, national and state, originate all the remoter ramifications of political functionaries known to law and history amongst us. But when it is attempted to make the aggregate of the state electorates the sovereign, with all the dread inherent powers conceded to a sovereign by the analytical jurists, or even by those who, with Maine, deny to it the possession of absolute and irresistible power unlimited by moral considerations, — it is necessary to demur. Such a sovereign was never known in the United States, nor ever rendered visible by any decisive act of personal and original sovereignty or by any claim that it possessed such a power. Besides, while it is true that the supposed aggregate receives habitual obedience from the bulk of the Union, — through the obedience paid to its appointees, the members of the House of Representatives and, remoter still, to the President, chosen by electors named by it, and to the senators of the United States, chosen by the legislatures elected by it, — still, on the other hand, it pays habitual obedience to the nation, which virtually acts whenever that aggregate acts. If it is still denied that any such action can be attributed to the nation, I need only point to the unofficial action of the people in procuring the selection of a satisfactory person for its chief magistrate. This is done through a voluntary assemblage of citizens, unlicensed and unbidden by the governments of either state or nation, called the nominating convention. This body, though no part of the political organism, in placing in the field a winning candidate for the presidency, in fact elects that most important and powerful instrument of sovereign authority. What is that but the direct action of the people? It is easy to call it a mere expression of the popular preference; but it is more; it is, in reality, the appointment of the President. The action of the states' electorates, in voting upon that nomination, is but a

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registering of a decree previously issued by their master, now standing silent behind them. What would the reputation or the life of a presidential elector be worth who should disregard the mandate received by him as to the person to be elevated to the presidency, and vote contrary to the customary law prevailing in such elections? I do not say that the punishment of a recreant elector by the sovereign of the Union, the people, speaking through public opinion, would be right. It would be an act of sovereignty, a *fact;* and sovereignty is not a right, and its action is neither always morally right, nor productive of right. The waves of the sea do not always respect the barriers set up by man, even though consecrated by time and by solemn conventions. Much of the difficulty attending the conception of popular sovereignty would be obviated, if its opponents would consider that no conditions imposed upon it, as to the mode in which it shall exhibit itself or exercise its powers, are of real validity or efficacy. In our government, the sovereign has allowed the establishment of a certain system by which its multifarious powers are, so to speak, farmed out, in state and nation, to representatives; and what it allows, it enacts. Nevertheless, while it permits the majority of mature males in the several states and in the nation to make laws and constitutions, and to restrict themselves, and even verbally to limit it to certain modes and conditions of political action, yet such restrictions and limitations, powerful and efficacious to govern its subordinates, are but flax in the fire to its sovereign will. It is a most significant circumstance that in the Declaration of Independence, and in our Bills of Rights the sovereign has expressly reserved, for what it deems adequate and just causes, the right of revolution; the right to say to the various functionaries charged by it, or permitted by it, in state and nation, to exercise its sovereign powers: "Master, helmsman, and crew, one and all, go below; I myself now assume command of this ship." As our constitutions recognize this right, although it can hardly be called a constitutional right, that is, a right under the constitution, it is a right *over* the constitution; and perhaps, in the long run, it is the most valuable right reserved to the people, if

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they would be free. It is in fact the key-note, now heard in so many lands, of the chorus of liberty.

Before leaving this point, I will notice a sneer and a misrepresentation touching the doctrine of the sovereignty of the people uttered by Mr. Hurd in the volume to which I have referred. Affecting to believe that the advocates of the sovereignty of the people attribute sovereignty "to every congeries of thousands or millions as a fact," he jauntily disposes of the doctrine by saying that if that is claimed "as a fact, which is a fact at all times, it is a fact in which I do not take the slightest interest." Supposing this to have been said seriously, in the belief that it fairly presented the doctrine referred to, the obvious answer would be that, while the failure of Mr. Hurd to take an interest in an alleged principle of political philosophy, whether well or ill founded, would be a subject of regret to the people of the United States, it could hardly be set up as a complete refutation of that principle. But the truth is, that nobody ever announced such a principle of sovereignty. Such a congeries, whether of a thousand or a million, is not a sovereign community unless it exhibit the other marks of a sovereign; unless it be a "society political and independent," and possess and lack the habits above referred to. In international law there is no statute of limitations fixing the number of individuals necessary to constitute such a society; and if it conform to the definition of a sovereign society, the smallness of its numbers is a matter of no significance in determining its character.

Mr. Richman, in his article in the *Atlantic*, says that to be determinate, the sovereign body must be "certain and come-at-able." This phrase adds little to the idea of Austin. To be "certain" is but to have been determined, and to be "come-at-able" can only signify that the sovereign must be visible, and so composed that its members can be easily approached. In neither respect would the supposed sovereign of Austin have any real advantage over the people, which is omnipresent and is easily and perfectly reached, by the press, by the action of public meetings and like influences. Indeed, save for a single

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purpose, the people, as the sovereign, is just as come-at-able as the sovereign of the analytical jurists, — and that purpose is the bribery of its individual members. We may thank our stars that it is less come-at-able for such a purpose.

Hobbes attributes to the sovereign a quality which, though not specified in Austin's definition, is accepted by many of the school of analytical jurists as involved in the notion of sovereignty; *viz.* that of absolute power as well as of irresistible force. By this is meant that the sovereign, once constituted, can do whatever it pleases, right or wrong. Mr. Maine dissents from this extreme view, contending that while it possesses that power in fact, there are moral limitations to its actual exercise.[1] Subject to this limitation, he locates the irresistible force in the majority of the adult males, meaning doubtless a majority of the electorate, which consists in England as well as here of males twenty-one years of age and upwards. The doctrine of Hobbes, that the sovereign body in fact possesses irresistible force, can be readily accepted if that body be the nation; but to the statement of Maine that that force is located in the majority of the adult males, or of the electorate, serious objection may be made if the statement be intended as one of fact. It is doubtful if it would be true were that force attributed to the entire electorate. Thus, taking the census of 1880, the male population of the United States was twenty-five and a half millions, in round numbers, of which the males twenty-one years of age and over, of all classes, including Chinese, Japanese and Indians, were but a little above twelve and three-quarter millions. To the male population of non-voting age, of nearly equal numbers, add the female population of over twenty-four and a half millions, and it would be rash to say that the total of over thirty-seven and a quarter millions were not equal in physical force to the twelve and three-quarter millions of voters. But that does not express the true conditions of the problem. We have imagined the majority of the electorate to have no counteracting minority. In fact, it might be a majority of one, or consist of any number exceeding the minority; and, as ex-

[1] Early History of Institutions, pp. 357–359.

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perience shows, it would never be likely very much to exceed it. Suppose it to be a majority of two to one; add one-third of the electorate, over four and a quarter millions, to the thirty-seven and a quarter millions of non-voters, as much a part of the sovereign body as the electorate, — and the irresistible force of Maine would have to be looked for in the eight and a half millions of the majority. Imagine this electoral majority pitted against more than forty-one and a half millions, comprising the actual minority and its allies, and it would not be difficult to predict the result of a contest. If we suppose the voting majority to be nearly counterpoised by the voting minority, as it very frequently is, its irresistible force would be even more imaginary. It is not necessary, however, to pursue this line of thought further. That the nation, the people, is superior in strength and in endurance to any part of itself, is, I take it, both a mathematical and a sociological truth.

II.

The second point made by the analytical jurists and their few American followers is that the sovereignty of the people is not a *fact*, but a "metaphysical hypothesis."

What is a fact? Mr. Hurd says it is "a thing known by the observing intellect, aided by the bodily senses, whether in the judgment of the moral sense it ought to exist or not"; and he then describes his method of proceeding to discover that fact, or the sovereign, in our government:

> I have conducted my inquiry [he says] on the supposition that the existence of a nation as a political being may be known by generalizing certain actual events, regarded as exhibitions of political force or energy, in the hands of some actually existing human beings; which events are to be accepted as facts, because nobody can help accepting them as such.[1]

I might be content to rest the argument for national sovereignty upon inquiries conducted upon this principle and after

[1] The Theory of Our National Existence, Introduction, pp. xi, xii.

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this method. Let the "observing intellect aided by the bodily senses" look at the history and operation of political forces in the United States for the last thirty years, and say if it does not discern the presence and activity of a prodigious power, not proceeding from, nor always even directed by, presidents, governors, congresses or legislatures, nor by the favorite figment to which Austin attributes the sovereignty of the states and of the Union, the aggregate of the state electorates — a power which, in its unity and immensity, bespeaks the existence of an American nation? Did that timid, halting and largely traitorous aggregate rise against secession in 1861? Were the reluctant state governments spurred by it to patriotic activity? Did it fill the ranks of our armies, time after time, in spite of disloyal governors and parties, with soldiers full of an immense enthusiasm, caught, not from Union officials, not even from President Lincoln, but from the American people, — an enthusiasm kindled by unnamed men, women and children, who loved their country, who were ready to die and, what is more, to suffer, that both the slave and the white man might be free? Is there nothing in such a spectacle for the bodily senses to take cognizance of as a fact? Is there nothing there to beget in "the observing intellect" the suspicion that in that majestic aggregate known as the people, whose rising and movement it was, there was something more than a "metaphysical hypothesis, generated out of the social-compact theory"? And generalizing the actual events of the great uprising and of the ensuing war, "regarded as exhibitions of political force or energy," — must it not be admitted that those exhibitions were "in the hands of actually existing human beings"; and that those "events are to be accepted as facts because nobody can help accepting them as such"? If it has not been the American nation that has forced its way to the greatness and glory it now exhibits, while its affairs have, verbally and to the dull eye of the reactionary theorist, been conducted only by the dickering politicians who have too generally filled our public offices, — who has done it? It certainly was not the office-holders who carried on the war for the Union, nor was it they who conducted

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the even greater work of civilizing, educating and christianizing this country. Has this work been even aided, save in the single instance of education, by state or national officials? If it be said that this work is largely an exhibition of merely moral force, and not of the "political force or energy" contemplated by the definition, I ask if a source of such immense political force, ripening into so unprecedented an exhibition of military prowess, not on the part of our governments, but of those who fought our battles, the rank and file of the Union armies — if that source is not to be accounted a sovereign body, simply because it has exhibited also unprecedented moral force or energy?

It would be easy, did space suffice, to multiply examples of force or energy distinctly political, exhibited by the American people. But it is the less necessary, as Mr. Maine himself substantially admits all that is needful to establish the point I contend for, that the people is in reality the sovereign. Criticising Austin and his immediate school for neglecting certain conditions which in effect determine "how the sovereign shall exercise and forbear from exercising his irresistible coercive power," he says: "It is its history, the entire mass of its historical antecedents, which in each community determines" how it shall do or forbear; and he adds: "All that constitutes this — the whole enormous aggregate of opinions, sentiments, beliefs, superstitions, and prejudices, of ideas of all kinds, hereditary and acquired, some produced by institutions, and some by the constitution of human nature — is rejected by the analytical jurists."[1] While in this passage Mr. Maine doubtless does not consider these exhibitions of influence to be an exercise of sovereignty, he yet admits that they are so powerful as to determine how sovereignty shall, and how it shall not, be exercised. Obviously, if there is a vast body of influences, no matter of what kind, moral or physical, at work back of the Austinian aggregate, influences sufficiently powerful to determine both its action and its failure or neglect to act, — the source of these influences must be the sovereign; and it is not even verbally

[1] Early History of Institutions, pp. 359, 360.

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true, according to Austin's definition, that that aggregate is possessed of sovereignty.

Thus far I have accepted Mr. Hurd's definition of a fact. The same result would follow were I to propound that of the lexicographer Worcester: "That which is, or which exists; a reality; a thing done; an act." While etymologically the word "fact" means, of course, "a thing done," and so refers primarily to some act cognizable by the bodily senses, yet when used in political discussion, as here, to indicate the antithesis of a speculative dogma, hypothesis or opinion, and especially when used to characterize a power, it means, as Worcester defines it, a "reality," a thing "which really exists." Now, I maintain that not a single circumstance tending to characterize sovereignty as a reality, a power actually existing in a sovereign like that placed over us by Austin, is lacking in the sovereign contended for by American writers, the nation or people of the United States. Of course, from the nature of the case, the power itself is not directly cognizable by the bodily senses; it is only its political effects that are visible. Tested by that principle, it must be plain to "the observing intellect, aided by the bodily senses," that, without the people standing back of the skeleton suspended before us by Austin and announced as our sovereign, — without the people, to teach, to stimulate, to guide, to correct, and to punish, — this complex machine of government would have gone to ruin a hundred years ago, and a hundred times since then. We are justified, therefore, in believing the nation, the People spelled with a capital P, to be a fact; in believing it to possess, if any person or any body of persons amongst us possesses them, all the powers rightfully attributed by political writers to a sovereign.

As it is important to leave, if possible, no room for doubt upon the question, whether national sovereignty is a mere metaphysical hypothesis, or a reality, a *fact*, exhibited by a political aggregate capable of dictating constitutions, of directing the administration of government, and of wielding its sovereign powers readily and effectively, let us listen to Mr. Herbert Spencer's views of the subject. After remarking how prone we

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are to forget the ultimate while thinking of the proximate, as well in relation to the common origin of structures as to the common source of their powers, Mr. Spencer says:

> Though the habit, general in past times, of regarding the powers of governments as inherent, has been, by the growth of popular institutions, a good deal qualified; yet, even now, there is no clear apprehension of the fact that governments are not themselves powerful, but are the instrumentalities of a power. This power existed before governments arose; governments were themselves produced by it; and it ever continues to be that which, disguised more or less completely, works through them. . . . That which, from hour to hour, in every country governed despotically or otherwise, produces the obedience making political action possible, is the accumulated and organized sentiment felt towards inherited institutions made sacred by tradition. Hence it is undeniable that, taken in its widest acceptation, the feeling of the community is the sole source of political power; in those communities, at least, which are not under foreign domination. It was so at the outset of social life, and it still continues substantially so.[1]

If it be objected that the doctrine of national sovereignty leaves the citizen at a loss to determine whether the action he witnesses be that of the nation or of a mob, the answer is that the power of the sovereign ought to be exercised in accordance with the established laws of morality; that if, in the judgment of the individual, that which he witnesses is opposed, either in its mode, its principles or its probable effects, to those laws and so to the interests of the community, his duty is plain; that he is to look upon the action taken or proposed as perhaps unwarranted — as possibly not that of the sovereign — and to rank himself with those who for that reason oppose it. To him, it is not the sovereign who speaks, but a faction. In truth, promptness to estimate the character and consequences of political action, and alertness to oppose it if wrong or unconstitutional, are the qualities most needful in the citizen of a free state. Happily, however, most acts supposed to be those of the sovereign would be rather the acts of its representatives, and, if morally wrong, would be presumed to be unauthorized by the sovereign. To procure their reversal or repeal would require

[1] Principles of Sociology, vol. ii, part v, chap. 5, secs. 466, 469.

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only the ordinary exercise of the political power wielded by the citizen.

It is not probable that this presentation of the doctrine of national sovereignty, or any other that could be made, will be acceptable to the advocates of the feudal theory. But it is in harmony with American traditions; it expresses the ineradicable purpose of our people to keep themselves, in the future as in the past, relieved from the dangerous implications of the feudal theory, and to withstand its introduction into America; and no theory of sovereignty but that of the people as a whole is in harmony with the facts of American political life. So far the American theory has worked well. It promises equally well for the future; and if for any reason it be thought to be less scientific or less consistent with abstract political theory than that of Austin, so much the worse for abstract political theory. It is the American doctrine of sovereignty, and not the European.

JOHN A. JAMESON.

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THE COMPTROLLERS AND THE COURTS.

WHAT may be termed the accounting department of the United States government consists of seven auditors, four comptrollers and one register. Six of the auditors are such in name as well as in reality, and are distinguished from each other by numerals, as first, second, *etc.* But the commissioner of the general land office is also an auditor, though not so named. In the same way there are but two comptrollers by name in the accounting department — the first and the second. It need not be mentioned that the comptroller of the currency takes no part in the settlement of public claims and accounts. The other two, who are comptrollers in fact, though not in name, are the commissioner of customs and the sixth auditor. Contrary to the general belief, the numerals which are used to distinguish the comptrollers do not indicate any difference in rank or in power. The first comptroller, indeed, decides appeals from the sixth auditor; but the commissioner of customs and the second comptroller are entirely co-ordinate with the first. We have had one comptroller ever since the Treasury department was organized in 1789. The second was added in 1817. The sixth auditor dates from 1836; and the commissioner of customs was introduced in 1849, to relieve the first comptroller of the supervision of a branch of public business which had grown to be very great.

When the committee of the first Congress reported the Treasury bill, which provided, among other things, for the establishment of the department now under consideration, Mr. Madison urged that individuals having claims and accounts decided upon by the comptroller should be permitted to petition the Supreme Court for redress, and that the court should be empowered to do right therein.[1] This suggestion, however, was not heeded, and a people professing to hate tyranny placed

[1] Annals of Congress, June, 1789, p. 612.

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in power then and there an officer who, within a limited field, was absolute. He was not required to conform to the directions of those superior to him in rank. He was not amenable to the courts. He was beyond the reach even of a *mandamus;* for in all cases of payment of money he was supposed to exercise "discretion."[1] From his decision adverse to a claimant, there was no appeal except to Congress. The laws of the first Congress meant to give him the last word respecting the payment of claims upon the government.

In other departments, established contemporaneously with the Treasury, the secretaries were authorized to give the word of command to all subordinates concerning every matter within their respective jurisdictions. But the comptroller was designed to be a check upon his secretary. The secretary of War or the secretary of State may appoint, said Congress, "assistants to be employed . . . as he shall deem proper." The comptroller's duties, however, were definitely pointed out by statute. He was to see to it, among other things, that the orders given by the secretary of the Treasury for the payment of public money were "warranted by law."[2] He had been referred to in the debate of 1789 as an "independent officer," and of this independence he was never robbed. Attorney-General Wirt declared in an official opinion in 1823 that his decisions were not to be disturbed by the President himself. "My opinion is," he said, "that the settlement made of the accounts of individuals by the accounting officers appointed by law is final and conclusive, so far as the executive department of the government is concerned."[3] The soundness of this opinion was never disproved, though the question it was supposed to put at rest arose again and again. Almost every attorney-general was called upon to review it, and its discussion continued until nobody knew what relation really existed between the account-

[1] See Decatur *vs.* Paulding, 14 Peters, 497; Reeside *vs.* Walker, 11 Howard, 272; U. S. *vs.* Guthrie, 17 Howard, 284.

[2] Compare 1 Statutes at Large, p. 65, with pp. 28 and 49, 50; see also Lodge's Hamilton, VII, 107, 108. *Cf.* Attorney-General Cushing's distinction between accounting officers and ordinary bureau officers, 6 Opinions of Attorney-Generals, 329.

[3] 1 Opinions, 624.

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ing officers and the heads of department.[1] But the comptrollers, with Wirt's opinion spread before them, appear to have been the tranquil masters of the situation. Finally, in 1868, Congress ended the memorable and somewhat unseemly dispute by sustaining Wirt's position, though at the same time giving the secretaries the right to demand in certain cases a reconsideration by the comptroller and, that not proving satisfactory, to transmit the controverted question to the courts.[2]

After 1797, and until the Court of Claims was established, the only way in which any one having a claim against the government could obtain a judicial consideration of its merits was by having himself sued by the United States. He could then, under certain restrictions,[3] plead his claim so as to reduce or cancel that of the government against him. He was not allowed judgment, however, for any balance in his favor. This privilege of set-off was considered as an appeal from the comptroller to the courts. Fortunate was the disbursing officer or other creditor who could force the United States to sue him! Those who, while not indebted to the government, nevertheless had claims against it, had no redress after the rejection of their demands by the comptroller, but by petition to Congress.[4] From this reluctance on the part of the government to throw open the doors of its courts to such complainants, resulted four distinct and serious evils:

First. The executive officers charged with the adjudication of such cases were placed in a position both false and cruel. Without, as a rule, the aid afforded by argument of counsel, deprived even of the poor privilege of seeing the claimants and their witnesses face to face, with few or no judicial precedents

[1] Concerning this "vexed question," see Attorney-General Crittenden, 5 Opinions, 630, 647; and as to the "fluctuation of opinion" thereon, Attorney-General Cushing, 7 Opinions, 464, 468, 297, 298.

[2] See Revised Statutes, sections 191 and 1063.

[3] For example, proof of prior submission of the demand to the accounting officers and of its rejection by them.

[4] "It was no unusual thing for a person found a debtor by the rules of evidence which governed the accounting officers to request that he might be sued for the supposed balance, that he might have the benefit of the more liberal rules of evidence which prevail in courts of law." Wirt, 1 Opinions, 599.

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to guide them, and burdened with vast and pressing routine duties, they dismissed, doubtless, many a deserving claimant, adopted many a narrow practice and pursued many a harsh method. Owing to no grave fault, perhaps, of their own, but to the friction and defects of the ill-constructed system of which they formed a part, they incurred from time to time the sneers of the cabinet, the reproaches of the courts and the anathemas of suitors. Though a way is now open for claimants who may consider themselves aggrieved by the comptroller's decision to sue in the courts; though heads of departments, dissatisfied with his rulings upon matters connected with their expenditures, have ample power to demand a judicial determination of a question in controversy; and though judgments of this executive tribunal have become more enlightened and equitable by reason of the great body of departmental precedents laid down in accessible form in recent times; yet the suspicion of narrowness, arrogance and arbitrariness in this office has unfortunately lingered in the public mind long after the conditions which fostered such traits have been removed. This evil needs no comment. Public confidence in his integrity, impartiality and intelligence is as important to a comptroller as it is to a judge. He is in many respects a judicial officer. Personally, the comptrollers of the Treasury have usually been men of high character and attainments, in disposition conservative and just. Officially, they have been, until recent times, irresponsible, unmanageable and despotic.

Second. An immense encouragement was given to the misappropriation of public moneys. Officers who were conscious of deserving the credits for which they had vainly applied and who were laboring under old and apparently technical balances piled up against them at the Treasury, boldly recouped themselves from sums in their possession clearly belonging to the government, and dared a suit. The opening of a court before which such persons can establish their right to sums that accounting officers might not be disposed to allow, has been, it may be conjectured, an absolute benefit in a pecuniary sense to the government. On the 4th of March, 1853, the in-coming

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secretary found on the Treasury books debts due to the government amounting to over one hundred and thirty millions of dollars.[1] He informed Congress that a strict examination into the origin and history of this large balance made it manifest that the public money had been devoted to private use and allowed to remain unaccounted for until, in many cases, the parties became insolvent; and that these parties, in order to cover sums wasted and lost by private use, set up *unfounded claims for credits and services.*[2]

It is true that the greatest difficulty, in the early days, in the way of proper control of those charged with the disbursement of public moneys was to get them to make any report at all to the Treasury officials of their receipts and expenditures. Mr. Gabriel Duval, the comptroller in 1802, speaks of Mr. Sitgreaves, a commissioner under the treaty of 1794, as one of those who thought it could not be expected that accounts and vouchers should be kept or rendered "for the numberless items of detail which enter into the expenses of a gentleman abroad."[3] There were many who, scenting danger from afar, did not wish to have anything to do do with the comptroller. The early statute books are filled with laws designed to compel these officers to come in and settle. But the great bar to speedy settlements was not so much the negligence or peculation of revenue officers as the disinclination of the comptrollers to bring suit. On account of the expense involved, an action was never brought against a public debtor in the first years of our history unless some very strong circumstances seemed to demand such a course. And moreover juries were very likely to attach more importance than did the comptroller to these "unfounded claims for credits and services." Public accounts were in a wretched state. "Old Balances" rose up to fret and enrage each successive Congress. Committee after committee visited the Treasury and submitted reports upon the

[1] See Finance Report for 1855–6, pp. 35, 36. It should be added that the secretary, Mr. Guthrie, by earnest and systematic labor, cleared the books of over one hundred millions of this debt.

[2] *Ibid.* p. 40.

[3] American State Papers (Finance), vol. ii, p. 416.

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matter. The remedy granted in each case was an increase of the power of the comptroller. The first law, that of 1795, permitted him to summon the debtor and demand from him reasons why the charges made against him should not stand. If this process was ignored, penalties were added. In 1820 the comptroller was authorized to send his judgments to the proper marshal for execution. The debtor who refused to pay upon presentation of such a warrant was stripped of his property or cast into jail.[1] In 1809 a species of blackmailing, as it seems in retrospect, was resorted to in order to encourage prompt settlements. The comptroller was required to transmit annually to Congress statements of unpaid accounts. This requirement was made even more rigid in 1817. In 1828 the comptroller was authorized to withhold from those in arrears any compensation that might be due to them. When it is remembered that during this time almost all officers were compensated by fees, which they themselves collected and retained; that there were no clear rules established concerning pay for extra services and concerning double salaries for performing the duties of two posts; and that the comptroller, by a mere *ipse dixit*, declared what belonged to the Treasury and what to the officer; it is not astonishing that many good men were classed as defaulters and that the ranks of the rogues increased. Real delinquency found concealment and countenance in the number and amount of those unsettled balances.[2]

Third. The true state of the Treasury books was concealed from the people. The comptrollers, in obedience to the early laws which have been mentioned, sent to Congress every balance that appeared upon the register's ledgers. It was soon discovered that many of these involved the names of illustrious citizens, who had been honored with the highest offices. Explanations being demanded, it was ascertained that in some

[1] For incredible harshness in the operation of this law, see *Ex parte* Randolph, 2 Brock, C. C. Rep. 447.

[2] See Mr. Quincy's Report to House of Representatives, American State Papers (Finance), vol. ii, p. 415.

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cases the balances indicated money actually due, while in others accounts and vouchers yet to be acted upon would reduce and probably remove the published indebtedness. But there was found in addition a third class, namely, that of claims upon which the accounting officers did not feel at liberty under existing laws to decide. Points of a doubtful nature were involved; and though the claimants were pressing for a final settlement, the Treasury officials simply charged them with the money retained and claimed by them, refusing either to determine the title absolutely themselves or to assume the burden and expense of testing it judicially in court. The debt was simply charged. Collection was another matter.

The committees who reported to the House of Representatives in 1810 and in 1816 saw clearly that these Treasury statements not only circulated injurious suspicions against honest men, but also, by reason of this want of discrimination, diminished the odium and contempt which defaulters and peculators would otherwise have experienced. As early as 1816 it was suggested in Congress that some mode should be adopted for disposing of disputed claims of revenue officers and others who could not obtain a proper hearing at the Treasury. It was urged that some tribunal should be established "which might pass them in review and decide finally upon them, or report them with their opinion to the House for ultimate decision."[1] This was done in 1855, when the Court of Claims was established. But in the meantime, year after year, honest men, in nowise defaulters, were published to the world in company with precious rascals and "held up to the public under at least the appearance of having committed like frauds upon the government." Necessarily the real state of affairs could not even be guessed.

In 1860 the practice of sending these lists of debtors to Congress stopped short, nobody knows why.[2] The Senate in 1876 called for and obtained a statement of those balances which, having arisen since 1830, were due from public officers no longer in

[1] See American State Papers (Finance), vol. ii, p. 415; vol. iii, p. 123.

[2] Finance Report for 1881, p. 331.

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the service; but it was not ordered to be printed.[1] In 1885 the register of the Treasury published the balances which appeared on his books. He gave both sides of the ledger. His purpose was good, his industry commendable. But again the feelings of honest and honorable men were pained, because, though the balances charged to them were of the sort styled "nominal" or were absolutely inaccurate, yet there was nothing in the publication to distinguish these from those which represented actual defalcation.

The difference between the condition of public officers who nowadays have claims against the Treasury and that of the same class who were in the service earlier, is made very plain by a remark of Judge Weldon of the Court of Claims in the recent decision in the *Mosby* case:

> Public officers are not bound, in order to save their rights, to place themselves in antagonism to the accounting officers of the department, suffer themselves to be sued, and incur the odium, for the time, of being in default; but have the right to pay into the Treasury the disputed moneys, and then seek the courts to adjust and determine their claims against their superior and sovereign.

But before 1863, when the Court of Claims was made a real judicial tribunal, public officers, in order to establish their right to a disputed fee, had either to retain the money and run the risk of a suit brought against them, or to pay it into the Treasury with small hope of ever regaining it. It is easy to see how the most of them, relying on the maxim "*melior est conditio possidentis*," would hold all such fees, incur the charges of the accounting officers, and yet never, for obvious reasons, be summoned to court to prove property. The charges, however, went on the books. Many of them are there yet. The books and the balances which they show have thus been unfortunately discredited, and the people, not knowing how to interpret them, are kept in ignorance of the whole subject. Though sound policy would require full publicity as to who are really indebted to the government, the revelations of "Old Balances" have been so obscure, so misleading, and in some instances so false

[1] Finance Report for 1884, p. 269.

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and calumnious, that silence in this respect is golden. "Old Balances" attained their most lusty growth under the theory that charges duly registered and published would be an acceptable substitute for the judgments or decrees of a court.

Fourth. When the only hope of those who could not get accounts or claims through the Treasury was in Congress, the power of the lobby was at its height. Judge Richardson, of the Court of Claims, has well described the difficulties under which the committees of Congress labored in the trial of the facts presented to them by numerous and importunate public creditors. The cases were presented *ex parte*, supported by affidavits. But in that day, it is to be feared that the claimants' main reliance, to quote Judge Richardson, was upon "the influence of such friends as they could induce to appear before the committees in open session or to see the members in private."[1] The lobby is by no means extinct in these latter days; but far fewer ordinary claimants have occasion "to see" members of Congress "in private."

There is much in this review to encourage those who long for a government of laws as distinguished from a government of men. We now have not only an accounting department, but a court. Any one having a claim or an account against the government may elect his tribunal. If he chooses the comptroller, he may appeal from an adverse decision to the court. To claimants remote from Washington, the district and circuit courts of the United States are now open; for by a recent law these have been made so many courts of claims.[2] Indeed, even those who as principals, sureties or personal representatives stand charged with old balances, with no claim whatever to present as set-off, may petition the Court of Claims for a correction of the account.[3]

The comptrollers are now brought into close contact with the courts. Not only do they shape their course by judicial decisions, overturning, it may be, old departmental practices, but,

[1] See History, *etc.*, of the Court of Claims, in preface to 17 Court of Claims Reports.
[2] Act of March 3, 1887; 24 Statutes at Large, 505. [3] *Ibid.*

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under permission of the law, they apply directly to the court for advice in cases involving controverted questions of law or of fact. There is now no excuse for those who refuse to pay into the Treasury the sums for which the comptrollers hold them accountable. Such sums, after deposit, may be recovered through an orderly and inexpensive proceeding in court. Knowing that such proceedings may be instituted, comptrollers are not so apt to make arbitrary and partial decisions as they were when those accounting to them had no appeal save to a committee of Congress, already deafened and perplexed by crowds of petitioners. This subordination to the judiciary, and the formulation of principles through numerous decisions of the Court of Claims and the Supreme Court since 1863, far from weakening the comptrollers, have added much strength to their position and have greatly expanded the true field of their usefulness.

E. I. RENICK.

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THE LEGISLATURES AND THE COURTS:

THE POWER TO DECLARE STATUTES UNCONSTITUTIONAL.

WHEN the question of the adoption of the constitution of 1787 was under discussion in the Virginia convention, Patrick Henry declared that he took it as the highest encomium on this country, that the acts of the legislature, if unconstitutional, were liable to be opposed by the judiciary. This power by which the courts disregard the acts of the legislature and declare them null and void because contrary to the supreme law of the constitution has been a source of endless wonder to foreign students of our system of government. "No feature in the government of the United States," says Professor Bryce, "has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration and been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the ark of the Constitution." [1]

In speaking of this subject Sir Henry Maine says,

> The success of this experiment has blinded men to its novelty. There is no exact precedent for it either in the ancient or in the modern world. The builders of constitutions have of course foreseen the violation of constitutional rules, but they have generally sought for an exclusive remedy not in the civil but in the criminal law, through the impeachment of the offender; and in popular government, fear or jealousy of an authority not directly delegated by the people has too often caused the difficulty to be left for settlement to chance or to the arbitrament of arms.[2]

[1] American Commonwealth, I, 237. See Brougham's Political Philosophy, III, 337. As an illustration of this admiration and misunderstanding, I quote the following from Prof. J. E. Thorold Rogers' recent work, The Economic Interpretation of History, 344: "The American constitution even protects its citizens against legislation which is asserted to be just, for the Supreme Court can on appeal reverse and annul any act of the federal legislature which it declares to be unconstitutional."

[2] Popular Government, p. 218.

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While the doctrine can exist only in a government where there is a division of powers and a written constitution, it is not, as is often asserted, the necessary outgrowth of such a system. There are many nations now living under written constitutions, but this power seems to be confined exclusively to the American courts. The question has been much discussed by jurists in Germany and Switzerland, and while there are not wanting those who claim the power for certain courts in both these countries, the current of theory and practice is the other way. In Spain the supreme judicial tribunal may try cabinet ministers, but cannot set aside a royal decree. In France the Court of Cassation cannot question the validity of a law which has passed the Senate and the Chamber of Deputies. In Germany a law passed by the Federal Council and the Imperial Diet is beyond the reach of the Imperial Court. In Switzerland the supreme federal judicial power is vested in the Federal Tribunal, the members of which are appointed by the federal legislature. Under the constitution of 1848 there was an appeal on questions of public law to the Federal Council, from which there was a further appeal to the Federal Assembly. If the two chambers agreed, the decision was final; but if they disagreed, the decision of the Federal Council prevailed. This system was found unsatisfactory, as a large part of the time of the chambers was occupied in the discussion of mixed questions of law and politics. When the constitution of 1874 was adopted, this was in a measure remedied by providing for an appeal to the Federal Tribunal, which now has appellate jurisdiction over (1) conflicts of competency between federal and cantonal authorities; (2) disputes between cantons involving questions of public law; (3) certain claims for violation of rights of citizenship; (4) federal laws passed in execution of the federal constitution; (5) claims for violation of concordats between cantons and treaties with foreign countries.[1] Generally, if a cantonal law violates the federal constitution or a federal law, the Federal Tribunal will declare it invalid,[2] but in some cases recourse

[1] Adams and Cunningham, The Swiss Confederation, 73, 260.
[2] Jellinek, Gesetz und Verordnung, 401.

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must be had to the Federal Council. The federal legislature is the sole judge of its own powers, and the courts must enforce every law passed by it even though it violates the constitution.[1] All such laws are adopted by the people either tacitly or through the *referendum*, and the judiciary must submit their judgment on constitutional questions to the will of the people.

The jurists of Belgium maintain, in theory, that an act of parliament opposed to the constitution should be disregarded by the courts; but during almost sixty years of Belgian independence the power does not appear to have been exercised.[2] The continental statesmen have preferred to trust to the efficacy of declarations of rights and the restraining power of public opinion, rather than permit the courts to pass upon political questions. By such means they have attempted to confine legislative power within very narrow limits, without making any provision for rendering unconstitutional legislation of no effect.

The germ of the principle established in American constitutional law is found in the English law. The judiciary is an offshoot from the executive; it developed slowly from absolute dependence to comparative independence. Montesquieu, who found his ideal in the English constitution, appreciated the subordinate position of the judiciary as compared with the executive and legislature, remarking that "of the three powers above mentioned, the judiciary is in some measure next to nothing." Lord Bacon advised his ideal judge to consult with the king and the state, "to remember that Solomon's throne was supported with lions on both sides. Let them [the judges] be lions, but lions under the throne, circumspect that they do not check or oppose any points of sovereignty." [3]

The English people worked out their freedom through this subordinate judiciary. And while there were many instances of corrupt and subservient courts, the contests maintained by

[1] Dubs, Das öffentliche Recht der schweizerischen Eidgenossenchaft. (Zurich, 1878.) Soldan, Du recours de droit public au Tribunal Fédéral. Supplément du *Journal des Tribunaux* (Bâle, 1886).

[2] But see Giron, Le droit public de la Belgique, pp. 129–158.

[3] Essay of Judicature.

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the judges with the crown form some of the brightest chapters in English history. It required the loftiest courage to balance the scales of justice between the crown and the people. The judges were dependent for their offices upon the pleasure of a king whose prerogative was vague and uncertain. It was difficult to reconcile the acts of a tyrannical monarch with the principle that the king could do no wrong; yet this principle was the means by which the power of the courts was so extended as to permit them to inquire into the validity of acts of the government. As the king could not be presumed to have commanded a violation of law, an illegal act was treated as the act of a minister, who was not allowed to plead the command of the king in bar. Thus the violation of law was punished, and the dignity of the crown preserved.[1] The struggle between the crown and the people seeking in the courts a remedy for arbitrary violations of law was long and bitter, and ended only with the revolution of 1688, which definitely limited the royal prerogative. In 1769, Wilkes obtained a verdict of four thousand pounds against Lord Halifax, secretary of State, for illegally issuing a general warrant under which the plaintiff was arrested, his house searched and his papers seized.[2] It was through this course that the judiciary ascended to the level of the executive, and thus established a practical and effective check upon the arbitrary acts of the crown. But from the nature of the government no such control could be obtained over the legislature. A legislative act, being the joint act of crown, lords and commons, was a sovereign act and beyond control. A few eminent judges have, indeed, claimed for the English courts power to limit this absolute supremacy of Parliament, but it was never generally admitted and is inconsistent with the theory of the British constitution.[3] It remained for the colonists to carry the principle of judicial control further and apply it to legislative as well as to executive acts.

[1] Hare's Constitutional Law, I, 136. For an analogous principle in reference to American commonwealths, see Poindexter *vs.* Greenhow, 114 U. S. 290.

[2] See Wilkes *vs.* Wood, 19 State Trials, 1153; Entinck *vs.* Carrington, 19 State Trials, 1029. *Cf.* Boyd *vs.* U. S., 116 U. S. 616, 626.

[3] Coke declared: "The Common Law doth control acts of Parliament and adjudge

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II.

The colonists received their legal system from the mother country and with it the same general ideas of the powers and duties of the courts. When they came to lay the foundation upon which to build new governments, they did not break with the past, but adopted a judicious course of selection and elimination. That this was in a measure involuntary is evident from the fact that while they "talked like rank democrats, they acted like progressive Englishmen." They were familiar with the constitutional system of the mother country and with the history of the long years of struggle and conflict out of which it had been evolved. They had no faith in the theory that a new system of government could be ordered like a new suit of clothes. They would as soon have thought of ordering a "new suit of flesh and skin." "They had," says Mr. Bryce, "neither the rashness nor the capacity for constructing a constitution *a priori*." As Lowell eloquently puts it: "They knew that it is only on the roaring loom of time that the stuff is woven for such a vesture of their thoughts and expressions as they were meditating."[1] They reproduced, as far as was consistent with their circumstances, what they conceived to be the English constitutional system. In the texture of their minds they were Englishmen, perfectly satisfied with the English system of gov-

them when against common right to be void." Dr. Bonham's Case, 8 Rep. 114, note. Chief Justice Hobart declared, that an act of Parliament is void, if against natural equity. Hobart's Reports, 14. Lord Mansfield, when solicitor-general, argued that the common law that works itself pure by rules drawn from the fountain of justice is for this reason superior to an act of Parliament. 1 Atk. 33. But such doctrines were not kindly received by Parliament. Sir Thomas More was beheaded for affirming in private that there were some things Parliament could not do: "For example, no Parliament could make a law that God should not be God; no more could it make the King the supreme head of the church." There is an indirect way in which the courts limit the effect of Parliament's omnipotence. A court of equity may restrain a party from applying to Parliament for private legislation, where such legislation would be unjust. It will not permit parties to make a wrongful use of the right of petition. This jurisdiction is deduced from the special obligation the party is presumed to be under not to prefer a petition. See remarks of Lord Cottenham, in Stockton, *etc.* Ry. Co. *vs.* Leeds, *etc.* Ry. Co., 2 Phill. 670.

[1] Essay on Democracy.

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ernment and imbued with English ideas, but driven into nation-building by the acts of a misguided Parliament. They were not rebelling against English law but against English statesmen.[1] Hence in the system of government finally adopted, the great principles of English freedom were carefully preserved. There was no intention of abandoning Magna Charta, the acts of the Long Parliament and the Declaration of Rights. The principles preserved in these instruments were merely carried one step onward in the process of evolution to the Declaration of Independence and the constitution of 1787.[2]

Consequently we find in the new government the same general division of powers into executive, legislative and judicial, with the addition of a system of checks and balances which experience with arbitrary power had shown to be necessary. Here a step in advance was taken and a new and original idea in political science was introduced and applied: the judiciary was made a co-ordinate department of government, while retaining, as a matter of course, all the judicial powers which belonged to it in England and in the colonies. With the judicial system came the rules of the common law, as far as applicable to the changed conditions; with the common law came the doctrine of precedent. So far, this was simply transplanting and adopting the law to which the colonists were accustomed, and which they considered the best legal system in the world. But the change in the form of government from a monarchy to a republic rendered necessary a change in theory as to the location of sovereignty. The absolute authority of Parliament as sovereign was now transferred to the people, and the restraints which applied to the executive in the English system became applicable to the new government as a whole.[3]

[1] Brougham's Political Philosophy, III, 326.

[2] In the language of a recent writer, "The English colonies in America, which were finally transformed into independent commonwealths through their severance from the mother country, were in a legal and constitutional sense involuntary and unconscious reproductions of the English kingdom, — inevitable products of a natural process of political evolution." Hannis Taylor, The Origin and Growth of the English Constitution, 77.

[3] See the language of Mr. Justice Matthews in Poindexter *vs.* Greenhow, 114 U. S. 270, 290.

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The traditional powers of government fell naturally to the three departments, executive, legislative and judicial.[1] These departments were to exercise delegated powers,[2] defined and limited by a *lex legum* or over-law. These delegated powers must be exercised in conformity to the will of the sovereign or principal, as expressed in the instrument conveying the grant. Each department in exercising the power delegated to it acts for the sovereign, and is necessarily independent of any and all other departments. This principle of agency applies to both the national and the state governments, the former exercising such power as is expressly or impliedly granted by the national constitution; the latter all power not forbidden to them by the state or federal constitutions. The change in location of the sovereignty resulted in raising the judiciary to the position of a co-ordinate department of government, and the application of the established principles of the common law secured to it a controlling influence over the other departments. The interpretation of the supreme law, being a judicial act, belonged to the judiciary.

This doctrine is of course the outgrowth of a written constitution and a federal system of government; but the form of government alone will not account for its general acceptance. Only a law-observing people will regard the decision of an action as equivalent to the repeal or enactment of a law. The American people were a constitutional people strongly imbued with the legal spirit. They brought with them to America "the elixir of constitutions" and an inborn reverence for the constable's staff, — possessions which, in the language of Carlyle, had cost England "much blood and valiant sweat of brow and brain for centuries long in achieving." They came from a race accustomed to settling difficulties on legal lines. In the great debates of English history, as Macaulay says, there is not a word about Brutus the elder or Brutus the younger.

[1] "A legislative and an executive and a judicial power comprehend the whole of what is meant by government." John Adams, Works, IV, 186.

[2] Sovereignty itself cannot be alienated, but its exercise can be delegated. See Jameson's Constitutional Conventions, § 20; Lieber, Political Ethics, I, 251.

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All questions of liberty and freedom have been argued as matters of law and not of expediency. On the question of the vacancy of the throne Somers and Nottingham argued as on a demurrer. The people always felt that if the law could but be discovered, it must necessarily be sufficient for their protection. This legal spirit — this inborn habit of submission to law and the consequent respect for the courts — is essential to the success of a federal system of government; and when it exists, the prominence of the judiciary in the constitution is assured. The law courts become the pivots upon which the constitutional arrangements turn, and the judges become not only the guardians but the masters of the constitution.[1]

The forces at work in society at a given time are not ordinarily understood or appreciated by the people, and the founders of our government did not anticipate the part the judiciary was to play in the new system. To many it seemed the weakest of the three departments. Elevating it to equal rank with the executive and legislature, though in the line of natural development, was an experiment, and it was reasonable to anticipate that the new department would be most liable to encroachment. Neither Madison nor Hamilton, both of whom expected the courts to exercise the power of declaring laws unconstitutional, appreciated the mighty force passing into the hand of the hitherto subordinate power. Hamilton wrote:

> Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be least dangerous to the political rights of the constitution; because it will be the least in a capacity to annoy or injure them. . . . The judiciary is beyond comparison the weakest of the departments of power; it can never attack with success either of the other two, and all possible care is requisite to enable it to defend itself against their attacks.[2]

This seems to have been a protest against a certain jealousy of the new department felt by the people and by some few prominent men, easily traceable to the history of the immediate times.

[1] Dicey, *The Law Quarterly*, January, 1885; *cf.* also his Law of the Constitution, 167.
[2] *The Federalist*, No. 78.

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Several years after the organization of the government, Wilson, then a judge of the Supreme Court, alluded in a public lecture to the existing jealousies and prejudices against the executive and judicial departments, and traced them to the habits of mind acquired before the Revolution, when these departments were under the control of those in no way responsible to the people.[1] They had become objects of distrust because derived from a foreign source, regulated by foreign maxims and directed for foreign purposes, while the legislature was looked to as the chosen guardian of the liberties and political hopes of the people.[2]

III.

The natural result of the contest with parliamentary power was a disposition on the part of the colonists to look with favor upon any legal or constitutional principle which would limit that power. Consequently, we find the colonial lawyers and statesmen accepting the untenable theory of Coke and Hobart. All fear of the courts was lost sight of for the time. In his famous argument on the writs of assistance, James Otis maintained that an act of Parliament "against the constitution is void; an act against natural equity is void; and if an act of Parliament should be made in the very language of this petition, it would be void."[3] John Adams wrote to Mr. Justice Cushing in 1776: "You have my hearty concurrence in telling the jury the nullity of acts of Parliament. I am determined to die of that opinion, let the *jus gladii* say what it will."[4] This seems to have been the prevailing opinion when in 1779 Massachusetts framed what became the model for the various state constitutions. In this memorable instrument is found the first embodiment of the conception of three co-ordinate departments

[1] Wilson's Works, I, 397.

[2] "Sir," said John Randolph, "I can never forget that in the great and good Book, to which I look for all truth and all wisdom, the book of Kings succeeds the book of Judges."

[3] Quincy's Reports, 474; Tudor's Life of Otis, 62.

[4] Works of John Adams, IX, 390.

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of government. With the preconceived idea of the judicial power, it was inevitable that the duty of construing and protecting the new constitution should fall to the courts; and this seems to have been the intent of the men who drafted the constitution.[1]

The credit of the first of the long line of decisions by which this doctrine was established in our constitutional law belongs to Chief Justice Brearley and his associates on the bench of the supreme court of New Jersey. The case of Holmes *vs.* Walton[2] antedates all others. It was brought by writ of *certiorari* before the supreme court September 9, 1779, and was argued on constitutional grounds November 11 of the same year. The court held the matter under advisement over three terms and on September 7, 1780, the judges[3] gave their opinions *seriatim* for the plaintiff in *certiorari*.[4] In anticipation of the final decision, the legislature amended the statute in question.[5] This decision was followed in 1796 in the case of Taylor *vs.* Reading,[6] and again in 1804 in The State *vs.* Parkhurst.[7] The very interesting case of Trevett *vs.* Weeden[8] was decided in Rhode Island in 1786. It has been frequently cited as the first case in which the courts held an act of the legislature unconstitutional and void on the precise ground of conflict with the fundamental law.[9] But this seems to be an error. The point was raised and argued and attracted much

[1] Adams, The Emancipation of Massachusetts, ch. x.

[2] Referred to in State *vs.* Parkhurst, 4 Halstead (N. J.), 444.

[3] Brearley, Smith and Symmes.

[4] See Dr. Austin Scott, Papers of the American Historical Association, vol. II, p. 46.

[5] Laws of N. J. (orig. ed.) 49; 4 Halstead, 444. Gouverneur Morris wrote to the Pennsylvania legislature in 1785: "In New Jersey the judges pronounced a law unconstitutional and void. Surely, no good citizen can wish to see the point decided in the tribunals of Pennsylvania. Such power in judges is dangerous, but unless it somewhere exists, the time employed in framing a bill of rights and form of government was merely thrown away." Sparks' Life of Gouverneur Morris, III, 438.

[6] 4 Halstead, Appendix, 440. [7] 4 Halstead, 427.

[8] Trevett *vs.* Weeden; Pamphlet by J. B. Varnum (Providence, 1787). No reports were published in Rhode Island or New Jersey at this time.

[9] Cooley, Constitutional Limitations (4th ed.), 196; Bryce, The American Commonwealth, I, 532; Fiske, The Critical Period of American History, 175–6; McMaster, History of the People of the U. S., I, 337–9; Arnold, History of Rhode Island, II, 24.

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attention; but the action was dismissed for want of jurisdiction, and the constitutional question was not decided.[1]

This case is of much historical interest. The legislature had passed one of the numerous tender laws of the period, for the purpose of forcing the people to accept the paper money of the state at its face value. A heavy penalty was attached to the refusal to accept this money, and it was provided that the trial for the offense should be without a jury. The discussion of the question of constitutionality roused the legislature in defence of its threatened supremacy and, in language which leaves no doubt as to the legislative conception of the relative dignity and importance of the two departments, the judges were summoned to appear and explain their action.[2] Three of the judges obeyed this summons, but the other two pleaded sickness and the hearing was postponed. Mr. Justice Howell, in an elaborate speech delivered before the legislature in defence of the court, remarked that "the order by which the judges were before the house might be considered as calling upon them to assist in matters of legislation, or to render the reasons of their judicial

[1] The judgment of the court was as follows: "Whereupon, all and singular the premises being seen and by the justices of the court aforesaid fully understood: it is considered, adjudged and declared, that the said complaint does not come under the cognizance of the justices here present and that the same be and is hereby dismissed." R. I. Acts and Resolves, Oct. (2d Sess.) 1786, 6. In an argument in defense of the court before the legislature, one of the judges said: "The legislature has assumed a fact in their summons to the judges which was not justified or warranted by the record. The plea of the defendant in a matter of mere surplusage mentions the act of the General Assembly as unconstitutional and so void; but the judgment of the court simply is that the information is not cognizable before them. Hence it appears that the plea has been mistaken for the judgment." See *The Nation*, March 7, 1889.

[2] "Whereas," ran the resolution, "it appears that the honorable the judges of the Supreme Court of Judicature, at the last September term of said court in the county of Newport, have by the judgment of said court, adjudged an act of the supreme legislature of this state to be unconstitutional and so absolutely void; and whereas it is suggested that the said judgment is unprecedented in this state and may tend to abolish the legislative authority thereof: it is therefore voted and resolved that all the justices of said court be forthwith cited by the sheriffs of the respective counties in which they live or may be found, to give their immediate attendance upon this assembly, to assign the reason and grounds for the aforesaid judgment; and that the clerk of said court be directed to attend this assembly at the same time, with the records of the court which relate to the said judgment."

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determination." He declined to do the latter, but declared that "the court was ever ready, as constituting the legal counsellors of the state, to render any kind of assistance to the legislature in framing new or repealing old laws."[1] An unsuccessful attempt was made to remove the judges who had possessed the courage to allow counsel to cast doubt upon legislative supremacy, but they served out the term for which they had been elected. As the election was by the legislature, they were not awarded a new term, but before the new judges took their seats the obnoxious law was repealed.[2]

In Virginia the first clear assertion by the courts of the power to declare a law void was in 1782. As early as 1772, in Robbins *vs.* Hardaway,[3] Mason had argued against the validity of an act which provided for the sale of the descendants of Indian women as slaves; but no decision was reached, as it was found that the statute had been repealed. He argued that the act was void because contrary to natural right and justice, and a violation of the duties and obligations which men owe to each other in a state of nature. In May, 1778, the legislature of Virginia passed an act of attainder against one Josiah Phillips, an outlaw who had been devastating the state. During the year Phillips was captured, convicted and executed for highway robbery, the act of attainder being disregarded. It is uncertain whether this neglect of the law was the voluntary act of the attorney-general, or whether the court refused to recognize the attainder.[4] Professor Tucker asserts[5] that the latter was the case and that the court directed the prisoner to be tried. If this is correct, the case antedates Trevett *vs.* Weeden. In 1776 a law was passed in Virginia taking from the executive the power of pardon in cases of treason. Under this act

[1] 2 Chandler's Criminal Trials, 327. No such practice appears to have prevailed before the Revolution. See Memorandum on the Legal Effect of Opinions given by Judges, by Prof. J. B. Thayer, p. 12.

[2] Consequently, Professor Bryce's statement that "they were replaced by a more subservient bench" is purely a matter of conjecture, as the new judges had no opportunity to consider these statutes.

[3] Jefferson's Reports (Va.), 109.

[4] See 4 Burk, 305–6.

[5] See Tucker's Blackstone, App. I, 293.

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one Caton, having been convicted of treason, was pardoned by the House of Delegates without the concurrence of the Senate. The case reached the courts in 1782.[1] When the attorney-general moved for execution upon the prisoner, the latter pleaded the pardon of the House. Under the constitution as it then stood, the case was referred to the court of appeals for novelty and difficulty. There it was argued that the act of the assembly was contrary to the plain intent of the constitution and hence void. To the distinguished gentlemen who constituted the court of appeals in Virginia in 1782, this was a very disturbing question; but they met it with becoming boldness. Attorney-General Randolph, afterwards attorney-general and secretary of State of the United States, argued that whether the act was contrary to the spirit of the constitution or not, the court was not authorized to declare it void. The arguments at the bar must have been spirited, as they drew from the chief justice the somewhat hysterical statement: "If the whole legislature (an event to be deprecated) should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal and, pointing to the constitution, will say to them: 'Here is the limit of your authority, and hither shall you go, but no further.'" The court did not decide the point, but Pendleton, the president, remarked that the question of the power claimed for the court was "undoubtedly a deep, important, and, I may add, tremendous question, the decision of which might involve consequences to which gentlemen may not have extended their ideas." The report of the case adds: "Chancellor Blair, with the rest of the judges, was of the opinion that the court had power to declare any resolution of the legislature or of either branch of it, to be unconstitutional and void."

Six years later, in 1788, the question was again raised in the very interesting "Case of the Judges,"[2] which grew out of an attempt by the legislature to impose additional and extra-judicial duties upon the court. The judges addressed a remon-

[1] Commonwealth *vs.* Caton, 4 Call. (Va), 1. [2] 4 Call. (Va.), 135.

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strance to the legislature, in which they expressed their regret at being obliged to pass upon the constitutionality of a law, but declared that the alternative was either to decide the question or to resign their offices, and that not until this dilemma presented itself was the question actually considered. The latter alternative would have been their choice, if they could have considered the question as affecting their individual interests only; but viewing it in relation to their offices, and finding themselves called by their country to sustain an important position as one of the pillars on which the great fabric of the government was erected, they judged that their resignation would subject them to the reproach of deserting their station and betraying the sacred interests of society intrusted to them. On that ground they found themselves obliged to decide the question, however their delicacy might be wounded or whatever temporary inconvenience might ensue, and in that decision to declare "that the constitution and the acts were in opposition; that they could not exist together, and that the former must control the operation of the latter." Thus, not until it became a question of self-preservation did the court grapple with what was indeed a "tremendous question." These views were again declared in several later cases and were directly enforced in 1793 in Kemper *vs.* Hawkins.[1]

In New York the question was first raised in the celebrated case of Rutger *vs.* Waddington, decided in 1784. After hearing a very able argument by Alexander Hamilton, the Mayor's Court of New York held unconstitutional and void the Trespass act, which authorized actions by owners against those who had occupied their houses under British orders during the British occupation. Hamilton argued that the law violated natural justice, and the decision seems to have been placed upon this ground. It was a time of great public excitement, and popular meetings were held to denounce the decision. The Assembly resolved that "it would render legislatures useless"; and a mass meeting of indignant citizens declared that "such power would

[1] 2 Va. Cas. 20. See also Turner *vs.* Turner, 4 Call. (Va.), 234 (1792); Page *vs.* Pendleton, Wythe's (Va.) Rep., 211 (1793).

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be most pernicious."[1] The decision does not seem to have been taken very seriously even by its friends, as Hamilton tells us that he compromised subsequent suits based on the act.[2]

In 1792 the supreme court of South Carolina held an act of the colonial legislature of 1712 void, as in contravention of common right and of Magna Charta.[3] In North Carolina the power of the court to refuse to enforce a law because unconstitutional was elaborately argued and considered in 1787.[4] The court took the case under advisement and earnestly sought to avoid a decision on the constitutional question. After referring to these evasive manœuvres, the report of the case says:

> The court then, after every reasonable endeavor had been used in vain for avoiding a disagreeable difference between the legislative and judicial powers of the state, at length with much apparent reluctance, but with great deliberation and firmness, gave their opinion separately but unanimously for overruling the aforementioned motion for the dismission of the said suits.

In the course of the opinion the judges observed that

> the obligation of their oaths and the duty of their office required them, in that situation, to give their opinion on that important and momentous subject; and that notwithstanding the great reluctance they might feel against involving themselves in a dispute with the legislature of the state, yet no objection of censure or respect could come in competition or authorize them to dispense with a duty they owed to the public in consequence of the trust they were invested with under the solemnity of their oaths.[5]

Massachusetts seems to have attempted to grant the power to the court by statute. In 1786, in an act repealing any laws of the commonwealth inconsistent with the enforcement of the treaty with Great Britain, it was enacted

> that the courts of law and equity within this commonwealth be, and they are hereby, directed and required in all cases and questions coming

[1] Rutger *vs.* Waddington, Dawson's Pamphlet, p. 44.

[2] Works, edited by J. C. Hamilton, V, 115, 116; VII, 197; 19 *American Law Review*, 180.

[3] Bowman *vs.* Middleton, 1 Bay, 252.

[4] Bayard *vs.* Singleton, 1 Martin, 42.

[5] See Ogden *vs.* Witherspoon, 2 Hayward, 227 (1802).

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before them respectively and arising from or touching the said treaty, to decide and adjudge according to the tenor, true intent and meaning of the same, anything in the said acts or parts of acts to the contrary thereof in any wise notwithstanding.[1]

IV.

When the convention met in 1787 the idea of controlling the legislature through the judiciary must have been familiar to most of the members, as it had been asserted in New Jersey, Virginia, New York, Massachusetts and North Carolina.[2] The discussion had caused much popular excitement and the doctrine met with general approval outside of the legislatures.[3] It was necessary to devise some plan which would protect the national and state governments in the exercise of the full measure of power assigned to each. Several propositions having this in view were submitted to the convention. One contemplated that the governors of the states should be appointed by the central government; another that the central legislature should have the power of repealing state laws; while a third provided for a council of revision of which the judiciary was to form a part. The last-mentioned plan was strongly urged by some of the most prominent men of the convention. Against its adoption it was argued that the courts already had control over the laws through the power they possessed of declaring them unconstitutional. Madison,[4] while admitting that the courts would possess this power, wished a tribunal for revision, as laws might be unjust, unwise, dangerous and destructive,

[1] 1 Laws, 311. Two years later the Supreme Judicial Court held an act unconstitutional. See letter of J. B. Cutting to Jefferson; Bancroft's History of the Constitution, II, 472–3.

[2] Chief Justice Brearley of New Jersey was a member of the convention.

[3] Mr. George Ticknor Curtis says: "The somewhat crude idea of making a negative on state legislation a *legislative* power of the national government shows that the discovery had not yet been made of exercising such a control through the judicial department." Narrative and Critical History of America, VII, 240; Constitutional History of the U. S., new ed., I, 345. This seems inconsistent with the facts stated above. See language of Gerry, Elliot's Debates, V, 151.

[4] Elliot's Debates, V, 346.

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and yet not be so obviously unconstitutional as to justify the courts in refusing to give them effect.

The supremacy of the law and the preservation of the proper equilibrium between state and federal power required that there should be some authority competent to decide whether Congress or a state legislature had or had not in a particular instance transgressed the law of the constitution. Nothing could be gained by establishing a separate body of men to pronounce upon the constitutionality of laws. Such a tribunal would be as liable to err as the legislature. "*Quis custodiet custodes? Tribuni aut ephori?*" The peculiar training of the judges, "the middlemen" between "the pure philosophers and the pure men of government," fitted them for this duty.[1] That the courts would have this power under the constitution was generally admitted by the delegates. It was commented upon with approval in the constitutional convention by Gerry, Gouverneur Morris, Wilson, George Mason and Luther Martin; with disapproval by Mercer of Maryland and Dickinson of Delaware, who could not forget that the justiciary of Aragon became by degrees its lawgiver. In the state conventions, the matter was discussed in Connecticut by Ellsworth, who called the judiciary "a constitutional check"; in North Carolina by Davies; in Pennsylvania by Wilson; and in Virginia by Marshall, Randolph and Henry. The last named, a decided opponent of the constitution, was an earnest advocate of the independence of the judiciary. He believed that the judges should decide upon the constitutionality of the law, and feared that the national judiciary, as organized, would not possess sufficient independence for this purpose. The following is his language:

> The honorable gentleman did our judiciary honor in saying that they had firmness enough to counteract the legislature in some cases. Yes, sir, our judges opposed the acts of the legislature. We have this landmark to guide us. They had fortitude to declare that they were the judiciary and would oppose unconstitutional acts. Are you sure that your federal judiciary will act thus? Is that judiciary so well constituted and so independent of the other branches as our state judiciary? Where

[1] Lieber, Civil Liberty, 162–4.

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are your landmarks in this government? I will be bold to say you cannot find any.[1]

In *The Federalist*[2] the independence of the judiciary is elaborately discussed, and the existence of the power to pass upon questions of constitutionality seems to be taken for granted. It is there commented upon not as a mere possibility, but apparently in order to remove any lingering objections there might be to such a practice.[3]

In accordance with this idea, the Judiciary act of 1789 provided for a review in the Supreme Court of cases where the validity of a state statute or of any exercise of state authority should be drawn in question on the ground of repugnancy to the constitution, treaties or laws of the United States, and the decision should be in favor of validity.[4] The power appears to have met with approval in the federal courts, and it was boldly asserted as soon as the judges had acquired self-confidence. It must be remembered, however, that the federal judiciary was experimental. As De Tocqueville said: "Courts are the all-powerful guardians of a people which respect law; but they would be impotent against popular neglect and contempt." The nearest approach to a federal tribunal under the Confederation was the committee of appeals appointed by Congress in 1777, and its successor, the court of appeals, established in 1780. The career of these tribunals had not been such as to justify the new court in feeling that, as their apparent successor, it possessed a very great share of popular respect. The

[1] Elliot's Debates, II, 248.

[2] No. 78 and No. 80.

[3] 19 *American Law Review*, 184. For further illustration of the application of the doctrine, see Ham *vs.* McClaws, 1 Bay (S. C.), 93 (1792); White *vs.* Kendricks, 1 Brevard (S. C.), 469 (1805); Austin *vs.* Trustees, 1 Yeates (Pa.), 260 (1793); Respondent *vs.* Ducquet, 2 Yeates, 493 (1799). It met with much opposition in Pennsylvania. In 1808, in Emerick *vs.* Harris, 1 Binney, 416, the court considered it necessary to defend its position in a lengthy argument. The doctrine was opposed as late as 1843 in Commonwealth *vs.* Mann, 5 W. & S. 403.

[4] In 1824, Letcher of Kentucky introduced a resolution in Congress so to amend the law as to require more than a majority of the judges to declare a state law void. 8 Benton's Abridgment, 51. In 1830 an attempt was made to repeal this section (25) of the act. The bill was lost in the House, by a vote of 137 to 51; but many leading men voted with the minority. Sumner's Andrew Jackson (American Statesmen), 173.

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only important decision of the committee of appeals and the injunction issued to enforce it were treated with contempt by a Pennsylvania court.[1]

The first case in which the power of the federal courts to decline to enforce an act of Congress was asserted well illustrates the prevailing idea as to the position of the judiciary and the extreme modesty of the judges. In March, 1792, Congress passed an act providing for the settlement of claims of widows and orphans barred by certain limitations, and regulating claims to invalid pensions. The act directed the United States circuit courts to pass upon such claims, but made their decision subject to review by the secretary of War and by Congress. In the circuit court for the district of New York, Chief Justice Jay, Justice Cushing and District Judge Duane filed an order declining to execute the act as judges, but declaring that

> as the objects of this act are exceedingly benevolent and do real honor to the humanity and justice of Congress; and as the judges desire to manifest on all proper occasions and in every proper manner their highest respect for the National Legislature, they will execute this act in the capacity of commissioners.

Justices Wilson and Blair and District Judge Peters of the circuit court for Pennsylvania, being anxious that the President should not misunderstand them, addressed a letter to the chief magistrate, explaining the position taken by them "on a late painful occasion." After laying down the general principles governing the distribution of the powers of government, and elaborating the importance of an independent judiciary and the reasons for their determination, the judges assured the President that, though it became necessary, it was far from pleasant to be obliged to act contrary either to the obvious directions of Congress or to a constitutional principle in their judgment equally obvious, and that the situation excited feelings in them which they hoped never to experience again.

Justice Iredell and District Judge Sitgreaves of the North Carolina circuit, before any case came before them, joined in

[1] Thirty years later the authority of the court of appeals was affirmed by the Supreme Court of the United States in U. S. *vs.* Peters, 5 Cranch, 115. See

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an elaborate letter to the President explaining their conduct, expressing their doubts as to their powers under the law to act as commissioners and deploring their position.

> We beg to premise [wrote the learned judges] that it is as much our inclination as it is our duty, to receive with all possible respect every act of the legislature, and that we never can find ourselves in a more painful situation, than to be obliged to object to the execution of any law, more especially to the execution of one founded on the purest principles of humanity and justice, which the act in question undeniably is.

The question reached the Supreme Court at the August term, 1792, on an application for a *mandamus*[1] to the district court for the district of Pennsylvania, commanding it to proceed and hear the petition of one Hayburn to be placed on the list as an invalid pensioner. Attorney-General Randolph entered into a very elaborate description of the powers and duties of the court and advised the execution of the law.[2] No doubt existed in the minds of the judges, yet so great was the desire to avoid a conflict that the motion was taken under advisement and held until the statute was amended.

Sections two, three and four of the act of 1792 were repealed at the next session of Congress. The repealing act provided another mode for taking the testimony and deciding upon the validity of claims to the pensions granted by the former law. The third section saved all rights to pensions which might be founded "upon any legal adjudication" under the act of 1792, and made it the duty of the secretary of War in conjunction with the attorney-general to take such measures as might be necessary to obtain an adjudication of the Supreme Court, "on the validity of such rights, claimed under the act aforesaid, by the determination of certain persons styling themselves commis-

Van Santvoord's Chief Justices, 202; Patterson, J., in Penhallow *vs.* Doane, 3 Dallas, 54. For history of these early courts, see J. F. Jameson in Essays in Constitutional History during the Formative Period; also 131 U. S. Reports, Appendix.

[1] Hayburn's Case, 2 Dallas (U. S.), 409.

[2] Randolph said of this argument: "The sum of my argument was an admission of the power [of the court] to refuse to execute, but the unfitness of this occasion." Conway's Edmund Randolph, 144–5.

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sioners." The purpose evidently was to have it determined whether under the act conferring the power upon the circuit court, the judges of those courts, when refusing to act as courts, could legally act as commissioners out of court. In order to have this determined an amicable action was brought by the United States against one Yale Todd to recover money paid him under a finding of Chief Justice Jay and Judges Cushing and Law, acting as commissioners. After argument, judgment was rendered against the defendant. No opinion stating the grounds of the decision was filed, but the result was a determination that, as the power conferred by the act of 1792 was not judicial within the meaning of the constitution, the act was unconstitutional. Chief Justice Jay, and Justices Cushing, Wilson, Blair and Patterson were present at the decision, which seems to have been unanimous.[1]

In 1798 the question was again raised in the Supreme Court of the United States,[2] and it was held that there was no constitutional restriction to protect a state from passing a retroactive law affecting property right only. Mr. Justice Chase thought that a legislative act contrary to the first principles of the social compact could not be considered a rightful exercise of legislative authority. He was satisfied that the Supreme Court had no jurisdiction to determine that any law of the state legislature contrary to the constitution of the state was void, but declined to express an opinion whether they could declare void an act of Congress contrary to the federal constitution. Justices Cushing and Patterson concurred in the decision, but did not discuss the question. Mr. Justice Iredell, having gained confidence since 1792, said:

> If any act of Congress or of the legislature of a state violates those constitutional provisions, it is unquestionably void; though I admit that, as the authority to declare it void is of a delicate and awful nature, the court will never resort to that authority but in a clear and urgent case. If, on the other hand, the legislature of the Union, or the legislature of any member of the Union, shall pass a law within the general scope of

[1] The only report of this case is in a note to U. S. *vs.* Ferreira, 13 Howard, 40, 52.

[2] Calder *vs.* Bull, 3 Dallas (U. S.), 386.

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their constitutional powers, the court cannot pronounce it to be void, merely because it is in their judgment contrary to the natural principles of justice.

As early as 1795 Justice Patterson, when on circuit, in a case growing out of the territorial controversy between Connecticut and Pennsylvania, had held the Pennsylvania "quieting and confirming act" unconstitutional and void.[1] In his elaborate charge to the jury, after referring to the unlimited power of the English Parliament and the nature of written and unwritten constitutions, the learned judge said:

I take it to be a clear position, that if a legislative act impugns a constitutional principle, the former must give way and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that in such case, it will be the duty of the court to adhere to the constitution, and to declare the act null and void. The constitution is the basis of legislative authority. It lies at the foundation of all law and is a rule and commission by which both legislators and judges are to proceed. It is an important principle, which in the discussion of questions of the present kind ought never to be lost sight of, that the judiciary in this country is not a subordinate but a co-ordinate branch of the government.

This is a very important advance from the position of the judges three years earlier. Yet in 1800, Mr. Justice Chase said:

Although it is alleged that all acts of the legislature in direct opposition to the prohibition of the constitution would be void, yet it still remains a question where the power resides to declare it void. It is indeed a general opinion, it is expressly admitted by all this bar, and some of the judges have individually in the circuits decided, that the Supreme Court can declare an act of Congress to be unconstitutional and therefore invalid; but there is no adjudication of the Supreme Court itself upon the point. I concur, however, in the general sentiment. . . .[2]

Whether this power could be employed to invalidate a law enacted previous to the adoption of the constitution was suggested, but not decided.

[1] Van Horn *vs.* Dorrance, 2 Dallas (Pa.), 304.

[2] Cooper *vs.* Telfair, 4 Dallas, 194. The learned judge had evidently forgotten the decision in United States *vs.* Todd.

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Thus, the question was in a measure an open one when it came before the Supreme Court in the well-known case of Marbury *vs.* Madison, decided in 1803,[1] in which "the power and duty of the judiciary to disregard an unconstitutional act of Congress or of any state legislature were declared in an argument approaching to the precision and certainty of a mathematical demonstration."[2] President Adams nominated Marbury to a judicial office and, the Senate having confirmed the nomination, his commission was made out, signed and sealed, but not delivered. Upon the change of administration, Madison, secretary of State, refused to deliver it; whereupon Marbury, claiming that his title to the office was complete, made application to the Supreme Court for a writ of *mandamus* commanding the delivery of the commission. The court unanimously held that the legal right to the office had vested in Marbury, and that to withhold his commission was a violation of a legal right for which *mandamus* was the proper remedy; but that the provision of the Judiciary act purporting to give the Supreme Court jurisdiction to issue writs of *mandamus* in original proceedings was not warranted by the constitution and was therefore inoperative and void.

This opinion followed the practice of the English courts and subjected the ministerial and executive officers of the government to the control of the courts.[3] The language of Chief Justice Marshall is so clear and conclusive that I quote from it at some length:

> The question whether an act repugnant to the constitution can become the law of the land is a question deeply interesting to the United States; but happily not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles supposed to have been long and well established, to decide it.
>
> That the people have an original right to establish for their future government such principles as in their opinion shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. . . . This original and supreme will organizes the

[1] 1 Cranch, 137. [2] Kent's Commentaries, I, 453.

[3] Jefferson considered the opinion as to the legality of Marbury's claim "an *obiter* dissertation of the chief justice and a perversion of the law." Works, VII, 290.

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government and assigns to different departments their respective powers. . . . The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if those limits may at any time be passed by those intended to be restrained? . . . The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like any other acts is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law. If the latter part be true, then written constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. . . .

If an act of the legislature repugnant to the constitution is void, does it, notwithstanding its invalidity, bind the courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as though it was a law? This would be to overthrow in fact what was established in theory; and would seem at first view an absurdity too gross to be insisted upon. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. . . . This is the very essence of judicial duty. If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary acts of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the constitution is to be considered in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law.

The power was never seriously questioned in the federal courts after the decision in Marbury *vs.* Madison, and was gradually established in all the states.[1]

The Supreme Court was from the first a Federalist institution and it applied to constitutional questions the Federalist principles

[1] See Cohen *vs.* Virginia, 6 Wheaton (U. S.), 264; Fletcher *vs.* Peck, 6 Cranch, 87; Story on the Constitution II, 367. For a list of cases in which the Supreme Court of the United States has held statutes unconstitutional, see 131 U. S. Reports, Appendix, p. ccxxxv.

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of construction. This gave to the judiciary a political importance which Jefferson and his friends were not slow to appreciate. The Republican party came into power in 1800 by a majority so large that Jefferson in his inaugural address could say: "We are all Republicans — we are all Federalists"; meaning that the entire nation had become Republican. But this must have been with a mental reservation which excluded the federal judiciary. He realized perfectly well that his victory was incomplete so long as Marshall and his friends held the citadel of the Supreme Court. With the court under the control of this "arch-Federalist," the execution of the programme by which the federal government was to be reduced to its true proportions was impossible. Jefferson was an idealistic politician. He believed in the total depravity of his political opponents and in the perfection of his own idyllic theories of society and government. The means adopted to secure the triumph of these theories was apparently of minor importance. When the new party once secured control, slight irregularities could be corrected or forgotten. He now thought that the future prosperity of the country demanded restraint upon the power of the courts, and that in order to secure this, it was necessary to destroy their independence. In his opinion, a judiciary independent of the nation was a solecism.[1] That the country was with him, and would approve any plan having color of law, which would destroy what remained of the power of the Federalists, seemed in the light of the Republican majority beyond a doubt.

This control of the courts it was resolved to obtain through the process of impeachment. Adams' midnight judges were summarily disposed of. The law forbade the removal of the judge from office, but it did not forbid the removal of the office from the judge. This remedy, however, did not reach the real difficulty. The Supreme Court could not be abolished. Impeachment was thereupon adopted as a party weapon and was used first upon insane, inoffensive Judge Pickering, of the district court in New Hampshire. Success was achieved in this case without difficulty and the next move was against the able but

[1] Jefferson's Works, VII, 192.

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violent Justice Chase of the Supreme Court. Chase had been guilty of partisan conduct on the bench, deserving of severe censure, but not such as involved any element of crime. Randolph in the House and Giles in the Senate undertook to establish the theory that the Senate, in trying impeachments, did not sit as a court and should discard any procedure analogous to that in a court of justice. The theory, as expressed by Giles, was that the independence of the judiciary was a pure figment of the imagination; that there was not a word in the constitution about it, and that the assertion of such a principle was merely an attempt by the judges to establish an aristocratic despotism in themselves. The power of impeachment was given without limitation to the House of Representatives. The power of trying impeachments was given equally without limitation to the Senate. And "if the judges of the Supreme Court should dare, as they had done, to declare an act of Congress unconstitutional, or to send a *mandamus* to the secretary of State as they had done,"[1] it was the undoubted right of the House of Representatives to impeach them and of the Senate to remove them for giving such opinions, however honest or sincere they may have been in entertaining them.[2] Impeachment was not a criminal prosecution, and the conviction of a judge did not imply any criminality or corruption. It implied simply that the judge had opinions which the Senate considered unsound, and that his office was wanted for the purpose of giving it to some one who would fill it more acceptably to the party in power. A few members of the majority, however, considered this a dangerous doctrine, and would not concede that honest error of opinion was a ground for impeachment. The defence insisted that impeachment was restricted to misdemeanors indictable at law. The Senate became confused and never knew on which theory it proceeded. Chase was acquitted and the advocates of liberal impeachments were covered with ridicule.[3] Had Giles'

[1] J. Q. Adams, Memoirs, I, 322.

[2] Jefferson wrote as follows: "As for the safety of society we commit honest maniacs to Bedlam, so judges should be withdrawn from their bench, whose erroneous biases are leading us to destruction." Works, I, 82.

[3] Adams' History of the United States, II, ch. x.

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doctrine been established in this instance, the next move would have been against the chief justice, for daring to declare an act of Congress unconstitutional. This, however, was the final struggle and the power of the federal courts was never afterwards seriously questioned by Congress.[1]

The doctrine of a co-ordinate judiciary met with violent opposition in some of the Western states, where the people lacked the respect for law common in the older communities. The spirit of democracy generated in the wilds of a new country encouraged an exaggerated reverence for the rights of a majority. That a judge should assume to disregard the will of the people was to them incomprehensible, and deserving of nothing less than impeachment.[2] It was difficult for the freeman of the West to realize that by the constitution the sovereign people had not only limited their government but had also secured themselves against the whims of a majority.[3]

In 1805 the legislature of Ohio enacted a law defining the duties of the justice of the peace. During the following year Judge Pease of the circuit court decided that certain portions of this statute were repugnant to the constitution of the United States and therefore void. This decision was soon after affirmed by the supreme court of the state. As the act itself was of minor importance, the public clamor must have been due entirely to indignation at the assumption of power by the courts. Resolutions looking to the impeachment of the judges were introduced in the legislature of 1807, but were not acted upon

[1] The conflict between the Supreme Court of the United States and the state of Georgia, encouraged by the national executive, suggested a new theory. In 1838 Holsey of Georgia, who, according to Adams, "affects to be a systematic lawyer," argued that the three departments of the federal government must concur in holding a state law unconstitutional in order to set it aside. Adams' Memoirs, IX, 548–9. See Annals of Congress, 2d session, 7th Congress, pp. 141, 527, 729, 825. Lloyd's Debates, I, 219, 596; II, 284, 327.

[2] *Cf.* the recent resolution of the Farmers' Alliance of Minnesota, protesting against the decision of the Supreme Court in the "New Granger cases." [*Infra*, RECORD OF POLITICAL EVENTS, United States, Farmers' Interests.]

[3] Webster, Luther *vs.* Borden, 7 Howard (U. S.). The self-imposed checks of the constitution are "obstacles in the way of the people's whims, not of their will." Lowell, Democracy and Other Addresses, p. 24.

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till the following session, when two of the judges were impeached, but upon trial were acquitted.[1]

In the new state of Kentucky the firmness of the judges was put to a severe test. The majority of the people of the commonwealth belonged to the debtor class. The times were hard and the cry for more money was heard in the halls of legislation. In answer to the popular clamor, the legislature of 1820–21 chartered an institution to be known as the Bank of the Commonwealth. This remarkable bank was to be relieved from all danger of suspension by the very simple expedient of releasing it from any obligation to redeem its notes in specie. Certain lands of the state were pledged for their ultimate redemption, and in the meantime the duties of the bank were confined to the issuing of paper money. This paper was made receivable for public debts and taxes; private creditors could accept it at par or wait two years before taking any steps for the collection of their debts. Naturally this method of relief was not satisfactory to the creditor class. The question of the power of the legislature to pass the law was soon raised, and Judge Clark of the state circuit court held the law unconstitutional.[2] The judge was cited before the House of Representatives, and an effort was made to remove him; but the necessary two-thirds majority could not be obtained.[3] The message of Governor Adair in 1823 approved the relief system and denounced the courts for declaring the law unconstitutional. In the same year the court of appeals held the relief laws void because contrary to the constitution of the United States.[4] The people regarded the decision as an usurpation and an assault upon their liberties. The legislature affirmed the constitutionality of the laws, and an issue was made upon the right of a court to annul a law duly passed by the representatives of the people. The state elections

[1] *Western Law Mont'ly*, June, 1863. Cooley, Constitutional Limitations (4th ed.), 160*.

[2] See 23 Niles' *Register*, Supplement, 153, for the decision, the legislature's proceedings and the judge's defence. The power had been exercised as early as 1801 in Stidger *vs.* Rogers; Kentucky Decisions, 52.

[3] The vote was 59 to 35 in favor of removal.

[4] Lapsley *vs.* Breashear, 4 Litt. (Ky.), 47.

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of 1824 were fought upon this issue. The relief party struggled to win a majority of the legislature large enough to remove the judge. They succeeded in getting a majority, but not the necessary two-thirds. They then adopted a new plan. Following the precedent of the repeal of the federal Judiciary act in 1803, they repealed the act by which the court of appeals had been organized and through a new law constituted a new court. The old court held this act unconstitutional. The adherents of the different courts became known as the "old court" and "new court" parties, and for a time the state was in an uproar. The "old court" party at last prevailed and the acts of the new court have since been disregarded.[1]

V.

An unconstitutional law is a law which either assumes power not legislative in its nature or is inconsistent with some provision of the federal or state constitution.[2] In considering a state statute for the purpose of determining its validity, the federal court acts under an express law granting the power.[3] Its duty is to determine whether such state statute is contrary to the constitution of the United States, and if it is so, to disregard it. A federal court has no authority to declare a state law void because it conflicts with the state constitution.[4] In dealing with an act of Congress, it is necessary to look only to the constitution of the United States and to determine whether or not the power sought to be exercised is expressly or impliedly granted by that instrument. A state court, construing a state law, has a more complicated duty to perform. It must determine not only whether the act contravenes the federal constitution, but also whether it is in violation of any express or implied prohibition of the state constitution.

[1] Collins' History of Kentucky (rev. ed.), I, 218, 222.
[2] Commonwealth *vs.* Maxwell, 27 Pa. St. 444.
[3] Sec. 25 of the Judiciary act of 1789.
[4] Hunt *vs.* Lamphire, 3 Peters (U. S.), 280.

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The courts do not sit primarily to decide questions of constitutionality. Their domain is law, not politics. Although the political importance of the doctrine we are now considering is very great, the doctrine is purely legal. A statute can be declared unconstitutional only by refusing to enforce it in a litigated case, or by refusing to recognize it as protecting an officer who attempts to enforce it. The act of the legislature, being in the opinion of the court in excess of its constitutional authority, is simply disregarded. The case before the court is decided, and the constitutional decision is found in the reasons assigned for the judgment.[1]

There are cases, however, in which acts of Congress involving constitutional questions are not subject to review in the courts. Such may arise under the provision of the constitution that the United States shall guarantee to every state in the Union a republican form of government. Questions arising under this section are purely political and wholly beyond the province of the judiciary.[2] A political act cannot be restrained by the judiciary even though it violates the constitution, or a treaty or law made in pursuance thereof.[3] The levying of a protective tariff and the abuse of the power of taxation, are illustrations of political acts which are beyond the power of the courts.[4]

To avoid the uncertainty and inconvenience arising from the practice of permitting an unconstitutional enactment to stand on the statute books as valid until the question is raised in some particular case, various attempts have been made to require the courts or judges to act as general governmental counsel, giving to the executive and legislature in advance opinions upon the constitutionality of proposed measures; but it is now well settled that this would impose other than judi-

[1] For valuable discussions of the theory upon which the courts act, see Bryce, American Commonweath, I, pp. 246–7; Dicey, Law of the Constitution (3d ed.), p. 149; Lowell, Essays on Government, pp. 104, 119; Woolsey, Political Science, II, p. 333; Maine, Popular Government, pp. 223, 224.

[2] Luther *vs.* Borden, 7 Howard (U. S.), 1.

[3] The Cherokee Nation *vs.* Georgia, 5 Peters (U. S.), 1.

[4] See Madison's Works, IV, 144.

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cial duties upon the judiciary. Soon after the establishment of the national government, Washington asked the opinion of the judges of the Supreme Court upon various questions arising out of the treaty with France.[1] Having some doubts as to the course to be pursued, they asked for delay to consult with absent associates. To this the President assented. Marshall in his *Life of Washington* writes:

> About this time it is probable that the difficulties felt by the judges of the Supreme Court in expressing their sentiments on the points referred to them were communicated to the executive. Considering themselves merely as constituting a tribunal for the decision of controversies brought before them in legal form, these gentlemen deemed it improper to enter the field of politics, by declaring their opinion on questions not growing out of the case before them.

A few of the state constitutions require that the opinions of the judges be taken on some occasions by the legislature and the executive.[2] Such opinions are generally held to be advisory and not binding upon the courts in subsequent causes.[3]

[1] Jefferson's Works, IV, 22.

[2] Massachusetts (pt. ii, ch. iii, sec. 2); New Hampshire (1784, pt. ii, title, judiciary power, sec. 74); Maine (art. vi, sec. 3); Rhode Island (art. x, sec..3); Florida (1868, art. v, sec. 16); South Dakota (art. v, 13). The constitution of Colorado (amendment, 1886) provides that "the supreme court shall give its opinion upon important questions upon solemn occasions, when required by the governor, the senate or house of representatives; and all such opinions shall be published in connection with the reported decisions of the court." This is the only provision which calls for the opinion of the *court*.

[3] In Taylor *vs.* Place, 4 R. I. 324, the court, in dealing with a question on which an opinion had been given, said: "This is the first time since the adoption of the constitution that this question has been brought judicially to the attention of this court. The advice or opinion given by the judges of this court, when requested, to the governor or to either house of the assembly, under the third section of the tenth article of the constitution, is not a decision of this court; and given as it must be without the aid which the court derives in adversary cases from able and experienced counsel, though it may afford much light from the reasoning or research displayed in it, can have no weight as a precedent." A contrary rule prevails in Maine (70 Me. 583; 1880) and in Colorado (*In re* Senate Resolution, *etc.*, 21 Pac. Rep. 478). In the latter case, the chief justice, after referring to the fact that "it is the court and not the justices, which must answer," says that "these opinions have all the force and effect of judicial precedents." The general question is fully discussed, and the authorities reviewed and carefully analyzed by Prof. J. B. Thayer, in his pamphlet entitled, Memorandum on the Legal Effect of Opinions given by Judges (Boston, 1885).

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Courts do not exist for the purpose of watching over the general rights of citizens, nor are they instituted for the purpose of regulating and restraining the other co-ordinate departments of government. As against the legislature, constitutional rights only will be protected by the courts. In each state there are two constitutions, one written, the other unwritten. The latter is the outcome of social and political forces in history. It is a political organism, the constitution of the people as distinguished from the constitution of their government. In the more common acceptation, however, a constitution is a "systematic description of such a growth in the shape of a *formula* addressed to the understanding."[1] It is the written or secondary constitution which the courts guard. The oath of office does not bind a judge to protect and obey the primary, organic, unwritten constitution, wherein are found the general principles of justice and humanity not embodied in the written instrument. The protection of these fundamental principles has not been delegated, but is reserved to the people in their sovereign capacity. If either of the departments among which the delegated powers are distributed attempts to exceed its authority and violate fundamental principles, the remedy is in the hands of the people; and as no department will be presumed to violate these principles, no department will undertake to say that another has done so.

The courts cannot act until a party has attempted to use the judiciary as an instrument for the enforcement of rights supposed to have been created or recognized by a statute, or for the defence of some constitutional right which would be violated by the enforcement of a statute. By the refusal to recognize or to enforce a law, it is annulled, and this decision, by virtue of the doctrine of precedent, is generally followed in similar cases in the future. Hence, it is useless to institute new cases and the law becomes a dead letter. This is the exercise of the ordinary judicial function of deciding between conflicting laws, and the legislature cannot, by a contrary conclusion, affect the decision.

[1] Jameson, Constitutional Conventions (2d ed.), p. 67; Brownson, The American Republic, p. 218.

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As a rule, the judges have exercised this great power carefully and with due respect to the legislature. Some courts have gone so far as to adopt a rule that they will not hold a statute unconstitutional by a majority of a mere quorum, but will postpone the hearing until the wisdom of a full bench can be brought to bear upon the question.[1] But this is a mere rule of propriety, not of constitutional obligation. It is a well established rule that the question of constitutionality will not be decided unless it is necessary to the determination of the action. To quote from the language of the supreme court of Indiana:

> While the courts cannot shun the discussion of constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to draw in such matters collaterally, nor on trivial occasions. It is both more proper and more respectful to a co-ordinate department, to discuss constitutional questions only when that is the very *lis mota*. Thus presented and determined, the decision carries a weight with it to which no extra-judicial question is entitled.[2]

If any other question is presented by the record upon which the judgment can be rested, the constitutional question becomes immaterial.

Another important limitation upon the action of the courts is the presumption that a statute is valid until it is complained of by some one whose rights are invaded. A party whose rights are not affected by the statute cannot be heard against its constitutionality.[3] The statute is also given the benefit of all reasonable doubt. When the courts are called upon to consider the validity of a statute, they will, said Chief Justice Shaw,

> approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention

[1] Briscoe *vs.* Bank, 8 Peters (U. S.), 118. [2] Hoover *vs.* Wood, 9 Ind. 287.

[3] In Wellington, Petitioner, 16 Pick. (Mass.), 87, 96, the court says: "*Prima facie*, and on the face of the act itself, nothing will generally appear to show that the act is not valid; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the legislature, therefore, concurs with well established principles of law in the conclusion that such an act is not void, but voidable only; and it follows as a legal inference from this proposition that this ground of avoidance can be taken

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can throw any new light on the subject; and never declare a statute void, unless the nullity and invalidity of an act are placed in their judgment beyond reasonable doubt.[1]

The legislature must be presumed to have acted with integrity and with a desire to keep within the bounds of the constitution,[2] and so acting, deliberately to have solved their own doubts in favor of the constitutionality of the act. Whatever weight the courts are justified in giving to the fact that a statute has received the approval of the legislative and executive departments, is due to this presumption, that they have acted in good faith and have actually considered the question with care. This weight may be overbalanced only by the duty resting upon the courts to give the instrument from which they derive their powers the benefit of the doubt, when a question of conflict occurs.[3]

A statute must always be construed according to the legislative intent. The presumption is that the law was intended to take effect, and the court must, if possible, so construe it as to give it effect. The motives of the legislature cannot be inquired into by the courts, even where fraud is alleged. The presumption that a co-ordinate department has acted in good faith is conclusive. "We are not at liberty," said Chief Justice Chase, "to inquire into the motives of the legislature. We can only examine into its power under the constitution." Where the power exists, the courts are not at liberty to inquire into the proper exercise of that power. They cannot usurp the inquisitorial office of investigating the good faith of the legislature in the discharge of its duties. The responsibility for such discharge is not to the courts, but to the people, from whom the legislative powers are derived.

That a statute is unjust, oppressive, or in violation of some supposed natural, social or political right not protected by the written constitution, is not sufficient ground for holding it

advantage of by those only who have a right to question the validity of the act, and not by strangers."

[1] Wellington, Petitioner, 16 Pick. 95. *Cf.* the Sinking Fund Cases, 99 U. S. 700.

[2] United States *vs.* Harris, 106 U. S. 635, Woods, J.

[3] See Osburn *vs.* Staley, 5 W. Va. 85.

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unconstitutional.[1] Nor is it sufficient that a statute violates the spirit supposed to pervade the constitution. This spirit is too evanescent to be dealt with by the courts. Attempts have frequently been made to have acts declared unconstitutional because contrary to the fundamental principles of republican government. But this reason involves a purely political question, falling within the province of the legislature. These fundamental principles are vague and are subject to variation with changes of public policy. The best established general principles are subject to reasonable exceptions; and the courts are not justified in saying that a certain act is not such an exception.[2]

It is not necessary, however, to the unconstitutionality of an act that it be in conflict with some express words of the written constitution. It is equally void if in conflict with implied provisions, or if inconsistent with some provision which confers the power sought to be exercised by the legislature upon some other department of the government, or if there is a failure to observe the forms in accordance with which the authority is to be exercised. Where judicial power is granted to the judiciary, it is impliedly denied to the executive and legislature. The general assignment of governmental powers to the three departments is equivalent to the exclusive grant to each of the whole authority naturally pertaining to its character.

CHARLES B. ELLIOTT.

[1] Sharpless *vs.* Mayor, *etc.*, 21 Pa. St. 160–4, Block, C. J. "The rule of law upon the subject," says Judge Cooley (Constitutional Limitations, 204), "appears to be that except where the constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operates according to natural justice or not in any particular case."

[2] In the License Tax Cases, 5 Wall. 469, Chief Justice Chase said: "There are undoubted fundamental principles of morality and justice, which no legislature is at liberty to disregard, but it is equally undoubted that no court except in the clearest cases, can possibly impute the disregard of these principles to the legislature. This court can know nothing of public policy except from the constitution and the laws and the course of administration and decision."

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ON CENSUS METHODS.

THE present enumeration of the people of the United States, which will be known as the eleventh census, is the greatest piece of statistical work undertaken in modern times. It will cover sixty-five million people, scattered over more than three million square miles of territory; while the variety of information sought will be more exhaustive, and the proposed analysis of results more elaborate, than anything that has ever been attempted in America or Europe. A census is in itself a matter of profound interest. It is most commonly thought of, perhaps, as a sort of national "taking of stock," to show the progress of the community in population, wealth and well-being. From a scientific point of view, however, it is much more than that. It is an opportunity for sociological observation, which comes only once in ten years and which must be utilized punctually and to its fullest extent; for that particular opportunity will never return. It is like a transit of Venus or a total eclipse of the sun, for the observation of which astronomers make preparations months beforehand and travel thousands of miles. Moreover, each successive census makes one of a series, and if it is defective or distorted, it will, for all time to come, be a disturbing element in comparisons of social growth and development.[1]

The importance of these considerations is often lost sight of in this country, on account of the lack of scientific interest in statistical work and of scientific criticism of the results. In England a somewhat more favorable condition of things seems to

[1] How such an opportunity for sociological observation may be lost, and lost forever, is seen in the failure to take a census in the state of New York in 1885, owing to the quarrel between the governor and the legislature. How such an opportunity may be imperfectly utilized is seen in the defeat of the proposed census law of 1870, by which the ninth census would have been taken according to the improved methods adopted ten years later, — the defeat being due to the personal feeling between Senators Sumner and Conkling. See *The Nation*, vol. x, p. 116.

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exist. The Royal Statistical Society of London takes an active interest in all such work and numbers among its members many government officials.[1] On the continent, the numerous statistical journals are constantly discussing statistical methods and the value of the official returns. The old statistical congresses, which formerly met every few years, attempted to bring about a uniform system of classification in different countries; and the new International Statistical Institute has undertaken the same work. At the head of the statistical bureaus in Europe are placed men of the highest scientific attainments, such as Farr, Ogle and Giffen in England; Engel, Von Mayr, Becker, Böhmert, Körösi and Keleti in Germany and Austria; Bodio in Italy, Bertillon in France, and many others. None but a scientific man could stand the stream of criticism that assails the work; while not only does the community get the best service, but science is also advanced.

In this country no such interest is felt. No economic association or statistical society petitions Congress in regard to the scientific scope of the census.[2] Additions are made to the schedules by Congress, but they are either for political effect or are due to momentary interest in a particular question, and they are often forced upon the superintendent without regard to their permanent usefulness or to the danger of over-burdening

[1] The society "has since the year 1840 appointed a committee before every census to inquire into the various questions and report to the council. In consequence of the reports of these committees, the society has from time to time made important representations to the government of the day, which, while they have disappointed many by not effecting all that the society had hoped to achieve, yet have resulted in very important improvements. The most notable was in 1840, when the action of the society led the government to withdraw its bill and introduce another, modelled on the lines suggested by the council." *Journal of the Royal Statistical Society*, vol. 52, p. 440; see also vol. 51, p. 816.

[2] It is a curious fact that at the beginning of the century very considerable interest seems to have been felt in the scientific possibilities of the census. Just before the enumeration of 1800, the American Philosophical Society, of which Thomas Jefferson was president, memorialized Congress recommending a more extended age classification, distinction between natives, foreign-born and aliens, distinction of occupations and professions, *etc.*, the society believing the "duration of life to be longer here and the increase of population more rapid than elsewhere." The Connecticut Academy of Arts and Sciences, of which Timothy Dwight was president, petitioned for the same things in order to "collect materials for a complete view of the natural history of man

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the enumerators.[1] No adequate criticism follows the census. Disappointment is often felt at local results, and charges of partiality or even of corruption are freely made, because the returns do not show the population or the industrial activity which the imagination of a particular community had fondly pictured.[2] The census office immediately assumes an attitude of defence, because its integrity is assailed. It learns nothing, because the criticism is on results, not on methods; that is, on its honesty, not on its skill. No new light is thrown on the subject. The superintendent of the next census, if he is of a combative disposition, simply presses forward on the old lines, prepared to endure the abuse which will follow; or, he unconsciously relaxes the severity of his methods, in order to get results that will "satisfy the people."

This sort of criticism, besides being grossly unjust to honest public officials, is in two respects misleading and injurious. In the first place, it entirely ignores the great question of the proper scope of a census. The most important result of experience in census-taking is the knowledge as to what a census can and ought to do, and what it cannot do and ought not to attempt. A distinguished French statistician has enunciated certain dicta on this subject which are well worthy of consideration, both by census officers and by the general public — including our law makers.[3] There are certain facts which, owing to the nature of things or to the particular disposition of a people, cannot be ascertained. Questions touching personal religious belief or opinion, as well as questions in regard to personal indebtedness or private income, are apt to be resented as inquisitorial. Further, there are certain facts which can be ascertained but

and society in this country." Congress paid no attention to either petition. Garfield Committee Report, Second Session, 41st Congress, House Reports, vol. i, no. 3, p. 35.

[1] Scientific criticism would probably reduce rather than increase the number of inquiries. The schedule is much too large and demands detailed answers which are a burden to both the enumerator and the enumerated. See Walker, article Census, Encyclopædia Britannica. Yet every superintendent has to fight to keep additional inquiries off the schedule, especially such as would awaken suspicion or antagonism and injure the whole return.

[2] See Tenth Census, vol. ii, Introduction, p. xl.

[3] Levasseur, La Population Française, reviewed *infra*.

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which are not worth knowing; as, for example, the personal habits of individuals. Finally, there is a great list of things which can be known and which would be interesting, but which are not worth the expense, chiefly because the money can be better spent in other ways. It is not easy to determine whether an inquiry comes within one of these three categories or not; and it must be said that, in the present state of scientific and popular criticism in this country, our statisticians receive very little aid in solving the problem. Immersed as they are in practical work, it is greatly to their credit that they keep an open ear for such suggestions as come within their reach, and that they are ready to profit by them.[1]

In the second place, the vulgar criticism lays no stress on the time and labor and skill necessary for scientifically "working up" the statistical material. It demands quick results. It is impatient of delay. Now, it is of course desirable that the general results of a census, such as the total population and those facts that are of immediate administrative value, should be made public as soon as possible; and that is always done in our census. It has sometimes been said that the tenth census, or at least certain parts of it, were unreasonably delayed, owing to miscalculations as to expense.[2] But the full value of a census is obtained only by careful, elaborate and skilful tabulation and analysis of the raw material. This requires time

[1] The schedules for the eleventh census show very distinctly with what care the officers have studied the experience of the tenth census, of the Massachusetts census of 1885, and of the Interstate Commerce Commission. The superintendent has shown great wisdom in securing the services of such men as Mr. Wm. C. Hunt, Dr. John S. Billings, Mr. Frank R. Williams, Prof. Henry C. Adams, Mr. Geo. K. Holmes and others, who have had previous experience or have made special study of the particular subjects entrusted to them. The need of a permanent census office is most keenly felt when one reflects that it is really only by accident that we enjoy the services of these men a second time.

[2] "These delays have, however, been very much exaggerated in popular estimation. The leading reports, those which were specially made up of purely statistical matter, were, with the single exception of that on mortality, published in 1883, — a date which, considering the greater scope of the work, compares favorably with the record of any previous census. The volumes thus published in 1883 were the two volumes of the Compendium, and, of the final quarto reports, the following: vol. i, Statistics of Population; vol. ii, Statistics of Manufactures; vol. iii, Statistics of Agriculture; vol. iv, Statistics of Transportation. The foregoing volumes comprised nearly every-

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and thought. The real work of the census office begins after the schedules are safely housed in Washington. It is like a geological survey. The field work may extend over only a few weeks or months, but years may be necessary to extract the scientific results. Of the difficulties and vexations of this part of the census work the public has, and can have, no just appreciation. But the public should recognize that this is purely scientific work and should treat it accordingly. It should man its census office with the best scientific talent and then patiently await the result. On the face of it, we might even say that a sociological survey of sixty-five million people is a more difficult thing than a geological or a coast survey, and that it requires even more talent, thought and experience. But without being too much discouraged by this lack of scientific interest, — for which popular intelligence and the liberality of the government in meeting the financial needs of the office[1] afford a certain compensation, — let us examine the schedules of the new census, for the purpose of determining what scientific results we can justly expect and demand.

From a scientific point of view a census falls naturally into two parts. The first includes those facts that are of general sociological interest: statistics of population and everything pertaining directly to population — vital statistics, social statistics, *etc.* The second includes those that are of economic interest: statistics of agriculture, manufactures, transportation, wealth, taxation, indebtedness, *etc.* The main facts in regard to population are to be collected, in the coming census, on a family schedule containing some thirty questions, a half dozen of which might much better be omitted.[2] One inquiry de-

thing of a statistical character, with the exception of the mortality statistics before referred to, which it had been usual to publish in a census of the United States; while they contained over and above what had ever before been published in this line far more than the sum of all the omissions." Gen. Francis A. Walker, in *Quarterly Journal of Economics*, vol. ii, p. 141.

[1] See Carroll D. Wright, The Study of Statistics in Colleges. Publications of the American Economic Association, vol. iii, p. 6.

[2] The schedule covers the following points: number of families in a dwelling house; number of persons in a family; whether soldier or sailor in the Civil War, or widow of same; relationship to head of family; color; sex; age; conjugal condition; whether

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mands a distinction between white, black, mulatto, quadroon and octoroon. A gentle scepticism may be indulged in as to whether either the individuals or the enumerators will be able to answer the question with the desired degree of refinement. The statistics of conjugal condition at the tenth census were never published; so that here we shall have new information. The inquiry, whether married within the census year, is intended to give us an approximate marriage-rate, which, in the absence of registration of marriages, will be of great interest, although it will be only an approximation. The inquiry as to number of children will also have great sociological interest, especially in reference to the comparative fruitfulness of American and foreign-born women. One of the most interesting features of the United States census has always been the information which it affords us regarding the foreign-born population. In no other country in the world is there such an opportunity to study different races and nationalities living side by side under the same conditions. The eleventh census promises to surpass the tenth in this respect; for it will give us place of birth, parent nativity, number of years in this country and whether naturalized or not. Besides the usual data concerning profession or occupation, an effort will be made to ascertain the number of months unemployed. How far this inquiry will give us accurate information as to industrial idleness is not easy to determine. The subject is so important that it is perhaps well to make the attempt, although it complicates the schedule by adding a question that cannot be answered without reflection. The school and illiteracy inquiries are an improvement on those of the tenth census, in that they distinguish two degrees of illiteracy, as well as inability to speak English.

The demand to be made on the census in regard to these

married during census year; mother of how many children, and number of children living; place of birth; place of birth of father and mother; number of years in the United States; naturalization; occupation; months unemployed; attendance at school; able to read; able to write; able to speak English — if not, the language or dialect spoken; whether diseased, blind, deaf and dumb, crippled, insane, *etc.*; whether prisoner, convict, homeless child or pauper; four inquiries as to ownership

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returns is that they shall be analyzed and correlated in the most careful and exhaustive manner. The inquiries are numerous enough, — too numerous if anything; and after millions of dollars have been expended in collecting the facts, these facts should be made to yield the greatest results. The number of possible combinations and permutations involved in the answers to these twenty-five or thirty questions is enormous. Take, for instance, our urban population: we shall want to have it analyzed according to age, sex, color and nationality; as to length of time in this country; whether naturalized or not; occupation; illiteracy; diseased or defective; conjugal condition, *etc.* If we take the prisoners, we shall want an equal variety of information. The same is true in regard to the blacks, the Irish, the children in factories, the women of child-bearing age, the miners or engineers. We demand of the census office that it shall work out these results in a careful, scientific spirit, regardless of the conclusions that may be deduced; and especially that it shall not sacrifice this part of the work to more showy but really less valuable special investigations.

In regard to economic statistics, the demands we can make on the census are equally clear. In the first place, we shall have the general statistics of agriculture, fisheries, manufactures, mining and transportation. The gross figures as to cost of raw material, value of products, *etc.*, must be received with the usual large grain of allowance for the ignorance and indolence of the individuals making the answers, and the carelessness of the enumerators. The results will be approximate only; in the nature of things they can be nothing else. Scarcely one farmer in a hundred keeps accurate books of his outgo and income, and the annual value of his garden-truck or his buttermilk is an unknown quantity. Among manufacturers there is often an indisposition to reveal the facts in regard to their business, or at least to take the trouble to ascertain them accurately. We

of home or farm and mortgage on same. In case of soldiers and sailors, defectives and delinquents, mortgaged homes or farms and deaths during the year, special schedules are filled out.

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can demand, therefore, only general results, showing the progress of the community from one decade to another. On the other hand, there are some special inquiries which will be of great interest and in regard to which the census office has assumed a very grave responsibility, for the data furnished by it will be used in the solution of some of the most perplexing problems now confronting us. These investigations will be under the charge of special expert agents. And first a word as to the proper function of the expert agent in census work.

The expert and special agent business was very much overdone at the last census. Elaborate histories and descriptions of agricultural and mechanical processes were published, illustrated with thousands of expensive plans and cuts, — an undertaking which added greatly to the bulk of the volumes and consumed money which ought to have been devoted to working up the statistical data proper. The superintendent of the last census has fully explained why this was done in 1880, and has acknowledged the weakness involved in the procedure, so that we need not pursue the topic further.[1] But the superintendent of the eleventh census should understand that a repetition of the process is not to be tolerated, and he should hold his special agents down to the less exhilarating but more valuable purely statistical work.[2] The object of employing experts in statistical work is to control the returns. Here comes a manufacturer's return, for instance, which has been made out dishonestly or carelessly. The expert agent is the man who has enough knowl-

[1] "The Tenth Census was more than an enumeration of population, wealth and industry. It was a survey of the conditions of life, industry and production, such as cannot fail to be of great value to a rapidly growing nation, such as was peculiarly appropriate to the tenth decennial census, . . ." "Much of the work in them [the special reports] has been done once for all," *etc.* "I desire frankly to confess that while many noble results were obtained in this way [by special agents] between 1880 and 1883, which otherwise could not have been obtained at all, or only with greatly diminished value, this feature of the census law should undergo careful revision in a highly conservative spirit." *Quarterly Journal of Economics*, vol. ii, pp. 145, 157.

[2] The new superintendent has announced that where industries were fully treated in the tenth census, the only attempt will be to bring the information down to date. "The reports, however, which have been or may be selected to receive their first extended treatment in this respect, will be subject to such notice in the way of historical and philosophical research as may be justified by their importance and relation

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edge to detect, from the relation to each other of the different items, capital, raw material, wages, *etc.*, that the return is false, and his business is to secure a correct one. He may labor for weeks in order to straighten out a single table; but in the end that single table will be of more value than any number of colored maps and picturesque diagrams based on the uncorrected returns. The census volumes will not be so "big," but they will be much more trustworthy.

To understand the grave responsibility which the census is incurring, let us consider the bearing of a few of these special investigations.

The census office has been directed to gather the statistics of mortgage indebtedness: to ascertain whether individuals own the farms or homes which they occupy and whether the homes and farms are encumbered or not. This inquiry is already under way, and will reveal the total mortgage indebtedness of the country, how much has been paid off, the rate of interest and the motive for incurring the mortgage (misfortune, purchase money, improvements). The real object of the inquiry is to throw some light on the condition of the occupiers of land in this country; and on the basis of this investigation, all sorts of propositions — for a single tax, for the taxation of mortgages, the relief of farmers, *etc.* — are likely to be made. What we want of the expert agents is not colored maps showing which part of the country is nominally most burdened with mortgages, but the most careful scrutiny of each record and the correction or rejection of all returns that are misleading or absurd.

Again, this census is to make an elaborate inquiry as to capital employed in manufactures (including both credit and cash capital) and as to other items in cost of production, such as rent, insurance and taxes. Capital and cost of production will thus be brought into contrast with the total value of articles produced and of wages paid. These questions involve the

to the industrial progress of the nation, due regard being had to the obtainment of the most practical statistical results, combined with the highest considerations of true economy. . . ." Report to secretary of the Interior, Nov. 6, 1889, p. 18. It is safe to say that much of the history and most of the philosophy of the expert agents might be omitted without detriment.

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problem of profits and wages, as well as the minor question of the prosperity of protected industries. It will undoubtedly happen that, for one purpose or another, attempts will be made to distort the returns. But the alteration of one item is very apt to throw it out of harmony with the others, and thus to reveal the fraud to the eye of the expert. It will depend on the fidelity and skill of the census officers if the returns are in any degree trustworthy. Other illustrations might be found in the statistics of wages, of railroads, telegraphs and shipping, as well as of many particular industries where the answer to great public questions depends upon correct and tested returns and presentations. But the above will suffice. It will be easy enough to show later whether the census has been equal to its work.

It may be thought, perhaps, that we are making unreasonable demands on officials who, after all, are but men. It is necessary to remember, however, that they have an unexampled opportunity, and that all we demand is technical skill and honest endeavor. The amount of money at their disposal is very generous, —ten times that appropriated by any other government for census purposes. The superintendent is practically uncontrolled in the choice of his assistants and subordinates. Some inquiries are forced upon him, but otherwise he has full discretion as to methods of work. If we had a little more of the old Roman or the modern Chinese severity in regard to public officials, we might say that if he through wilfulness or carelessness should neglect so great an opportunity, he should pay for it with his head. Without being so bloodthirsty as that, we will say that the men who are about to attach their names to the eleventh census are deliberately handing themselves down, so far as the scientific world is concerned, to eternal credit or discredit. For a census is so connected with the past and the present that it never dies. It is a chapter in the continued record of the nation's progress and, as history at least, it can never lose its interest. It lives forever.

RICHMOND MAYO SMITH.

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THE TAXATION OF CORPORATIONS. I.

IN a previous essay[1] we have seen the inadequacy and practical failure of the general property tax. In all ages and in all countries it has been found almost impossible to reach intangible personalty. What has always been a difficult task has become immensely complicated to-day through the growth of the modern corporation. At present the greater portion of personalty in the hands of individuals consists of intangible property, of evidences of ownership in associations, of corporate securities. The first reform of our direct taxation is conceded by all to lie in this direction. Governments are everywhere confronted by the question how to reach the taxable capacity of the holders of these securities, or of the associations themselves. Whom shall we tax and how shall we tax them in order to attain a substantial justice? Perhaps no question in the whole domain of financial science has been answered in a more unsatisfactory or confused way. We have in the United States a chaos of practice — a complete absence of principle. And not only this, but there has thus far been absolutely no comprehensive attempt made, from the standpoint of theory, to evolve order out of the chaos in which the whole subject is plunged.[2]

The first requisite in any scientific investigation of this kind is to have the facts. The facts of corporate taxation in the United States have never been presented in their entirety. And yet, without a knowledge of the existing conditions, any propositions of reform would be utterly valueless. Given the laws, it is necessary next to consider the interpretation put upon them by the courts. But even then we have only the legal, not the economic view. Unfortunately, good law is not always

[1] POLITICAL SCIENCE QUARTERLY, V, 1 (March, 1890).

[2] The only book on this subject is Dietzel, Die Besteuerung der Aktiengesellschaften in Verbindung mit der Gemeinde-Besteuerung, 1859. But this has no application at all to American conditions; the distinctions it seeks to make are valueless, and the whole book is immature and antiquated.

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sound economics. It will be advisable therefore to subject the legal principles involved to an analysis from the economic point of view. Only after such a comprehensive examination, in the course of which a comparison should be made with the facts of European taxation, will it be possible to reach any conclusions that may lay claim to scientific precision. Only such conclusions, arrived at through such a method, should be made the basis for practical reforms.

This then is the programme of the present series of articles on the taxation of corporations. The great importance of having all the facts accurately stated leads me, even at the risk of tediousness, to devote the first essay to an examination of the history and actual condition of the tax, reserving the theory and criticism for future consideration.

I. *Early Taxation of Corporations.*

During the first two decades of this century, banks and insurance companies formed the chief examples of corporations, apart from the numerous turnpike roads and toll bridges. During the twenties and thirties the development of transportation facilities led to the creation of many canal and railway companies. And it was not long before the other forms of commercial and industrial enterprise followed in the same path.[1] The early tax laws

[1] The following list contains a statement of all private corporations chartered by New York state and existing at the close of each decade to 1830:

	1800.	1810.	1820.	1830.
Banks	5	11	33	64
Insurance cos.	3	11	31	73
Aqueduct or waterworks cos.	2	18	25	37
Coal cos.	0	0	4	6
Lombard and loan cos.	0	0	0	5
Manufacturing and mining cos.	2	28	61	108
Steamboat cos.	0	0	7	22
Railroad cos.	0	0	0	13
Canal cos.	0	3	6	30
Bridges	1	33	61	97
Toll bridges and turnpike cos.	0	7	21	23
Turnpike roads	9	119	246	298

The details can be found in N. Y. Revised Statutes, 1st edition, vol. iii, app.

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made no mention of corporations at all. But as the system in vogue throughout all the commonwealths was the general property tax, it was tacitly assumed that the property of artificial as well as of natural persons was equally liable. Corporations were a new institution. In the mind of the legislator, the readiest way to dispose of them was simply to thrust them into the existing methods of taxation, whether they naturally belonged there or not. Our Solons had neither the leisure nor the inclination to study the matter further.

The first commonwealth law which treats of the taxation of corporations in general is the New York law of 1823.[1] This provided that "all incorporated companies receiving a regular income from the employment of their capital" should be considered "persons" liable to the general property tax. They were required to make returns to the county officers of all their property and capital stock. The corporations paid the tax and deducted it from the dividends of stockholders. But they might commute by paying to the treasurer of the county where the corporations transacted business, ten per cent on their "dividends, profits or income," which the legislator evidently presumed to be identical. The taxes were paid by the county officers to the state, and were then credited to the counties in proportion to the amount of stock held within each county, after deducting the state tax.

In 1825 and again in 1828 the system was slightly changed so as to conform more closely to the general property tax. The law[2] was made applicable to "all monied and stock corporations deriving an income or profit from their capital or otherwise." The real estate of these corporations was separately taxed. In addition they paid the property tax on their capital stock paid in or secured to be paid in, deducting the amount paid for real estate and the stock belonging to the state and to literary and charitable institutions. Manufacturing and turnpike companies paid on the cash value, not the amount, of the capital stock. Turnpike, bridge and canal companies, whose "net in-

[1] Laws of 1823, p. 390, §§ 14 and 15, act of April 23.

[2] Revised Statutes (1828) I, 414. For the law of 1825, see act of April 20, § 7.

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come" did not exceed five per cent of the capital stock paid in, were exempted; while manufacturing and marine insurance companies under the same conditions might commute by paying five per cent of their net income. It will be seen that by this law corporations were divided into different classes, and that the system pursued was the general property tax, with the exceptions that if a corporation had no profits it paid no tax on its stock, and that certain classes could in certain cases commute by paying an income tax to the local officials.

This remained the tax system, except for banks and foreign insurance companies, until 1853. In that year[1] the total exemption of non-profit-paying corporations was abolished and all companies were taxed on the same principle, *i.e.* on their real estate and on the amount of the paid-up capital stock in excess of ten per cent of the capital, with the same deductions as above. All corporations, moreover, whose profits did not equal five per cent on the capital stock might commute by paying five per cent on "net annual profits or clear income." It seems that very few of the corporations ever availed themselves of this doubtful privilege. In 1857, therefore, the law was again changed. The principle of commutation was abandoned; and since there was no distinction between profitable and unprofitable companies, so far as personal property was concerned, all corporations were now taxed on their realty and on the actual value (not the amount) of their capital stock plus the surplus profits or reserve in excess of ten per cent of the capital. In addition to the previous deductions a further abatement was made for the capital invested in taxable shares of other companies. The remainder was then taxed in the same manner as the other personalty and realty of the county.[2] This remained the law of New York, with the exception of some special provisions as to banks and insurance companies, until the recent changes in the taxation of corporations. These however affect only taxation for state purposes, leaving the local taxation still governed by the provisions of the law of 1857.

It appears, then, that the New York system was a taxa-

[1] Laws of 1853, chap. 654.

[2] Laws of 1857, chap. 456, vol. ii, p. 1.

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tion of the real and personal property of corporations by the local assessors, and that the personal property was virtually defined as the capital stock not invested in real estate. In the other commonwealths where corporations were taxed at all, they were simply included in the general property tax; and most of the laws lacked even such provisions as those of the New York statute in reference to the capital stock. A typical enactment of this kind is the Connecticut law of 1826, which simply provided that the personal property of a corporation should be taxed in the place where its principal business was transacted.[1] In Massachusetts, where the first general law was passed in 1832, only the real estate and machinery of corporations were taxed. In lieu of the tax on personalty there was substituted the property tax on the corporate shares in the hands of individuals, a proportionate amount being deducted from each for the part of the capital stock invested in machinery and real estate.[2] But this was still in theory the general property tax. In the other commonwealths, when the corporation was taxed, the shares in the hands of individuals were usually exempt. The only state which from the very outset broke with the principle of the general property tax was Pennsylvania. Her method we shall learn a little further on.

With this one exception, then, the early principle of corporate taxation was the assessment of all real and personal property by the local officials. Corporations, in other words, were taxed by the same method as individuals. This primitive system has been retained up to the present day by many commonwealths for almost all classes of corporations. In eight states, indeed, the constitutions require that corporate property should be taxed in the same manner as that of individuals.[3] The practical defects of such a system, however, have led to numerous changes in many of the progressive states, and the tendency is everywhere away from the original plan.

In my previous essay I showed that the shortcomings of the

[1] Conn. Revised Statutes (1848), sec. 33. [2] Mass. Laws of 1832, 158, § 2.

[3] Articles and sections of the constitutions are as follows: Ala. xi, 6; Col. x, 10; Fla. xvi, 24; Io. viii, 2; Miss. xii, 13; Nev. viii, 2; Ohio xiii, 4; S. C. xii, 2.

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property tax were five in number: inequality of assessment, failure to reach personalty, incentive to dishonesty, regressivity and double taxation. With one exception, these objections are as applicable to the taxation of corporations as to that of individuals. To discuss them in detail would simply involve a repetition of what has already been said. The one exception consists in that phase of double taxation connected with the non-exemption of mortgages. In the case of individuals it was pointed out that to tax both the property and the amount of the mortgage debt was theoretically unsound, because the individual's true taxable property consists in his surplus above indebtedness. But in the case of corporations there is a difference. The capital stock of corporations represents, in many cases, only a portion of the property. The remainder is represented by the bonded indebtedness. And in this country, at least, it is well known that railroads are built mainly on the proceeds of the mortgage bonds. To exempt the mortgage debt in the case of corporations would hence be inequitable, even from the standpoint of the property tax. In taxing both capital stock and mortgage debt the state is therefore really reaching the true faculty of the corporation. In the case of individuals, indebtedness diminishes the capacity to pay taxes; in the case of corporations, indebtedness often increases that capacity, because it is simply another form of increasing the value and productiveness of the property. And it is this correct feeling that has led to the recent official demand in New York and elsewhere for the taxation of corporate loans — a demand that will be fully discussed later on.

With this one exception, then, the defects of the general property tax are equally true in the case of corporations and of individuals, if we understand by general property tax the separate taxation of each particular piece of realty and personalty. And there is the less need to discuss its practical defects because the whole tendency of modern American practice is away from this primitive system. All the facts to be recounted here set the stamp of disapproval upon the original plan. In the words of a celebrated report on taxation, this method of

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assessing corporations locally on their general property, is "as a system, open to almost every conceivable objection."[1]

II. *Development of the Corporation Tax.*

As a result of these practical defects many commonwealths have abandoned altogether, or in part, the taxation of corporate property by local officials. The movement away from the original position has taken a threefold direction: 1. The property of transportation companies, especially railroads, has been assessed separately by a special board and according to well-defined rules; 2. Certain classes of corporations, beginning with banks and insurance companies, but gradually including transportation companies and in a few cases other corporations, have been taxed, not on their property, but on certain elements supposed to represent roughly their taxable capacity; 3. All corporations in general have been taxed by a uniform rule, according to principles varying more or less in the different commonwealths.

The first tendency is seen in the case of railroads. Only nine commonwealths[2] still retain the primitive methods of the property tax. In these nine, the regular local assessors still include the railroad property in the county assessment.[3] This practice is confined, with the exception of a single state, to the extreme South and the far West. Twenty-two common-

[1] Taxation of Railroads and Railroad Securities. By C. F. Adams, Jr., W. B. Williams and J. H. Oberly. A committee appointed at a convention of state railroad commissioners, *etc.* (1880.) p. 8.

[2] The word commonwealth is here used to include the territories as well as the states proper. As the first session-laws of North and South Dakota were not yet printed at the time of completing the article, I have used the territorial laws of Dakota, thus making in all forty-six commonwealths. For the statistics of receipts from railroads and other corporations, see my monograph on Finance Statistics of the American Commonwealths, published by the American Statistical Association. Disconnected parts of this subdivision of the present essay have already been printed in the monograph. But they have been considerably altered, expanded and brought down to the close of 1889.

[3] La. Laws of 1886, no. 98, § 30; Mont. Laws of 1889, p. 221; Nev. Gen. Stat. §§ 1195–1199; N. M. Comp. Laws, § 2815; Ore. (Hill's) Annot. Laws, §§ 2744–2747;

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wealths[1] have broken away from the original custom so far as to have the railroad property assessed for state purposes not by local officials but by a special board.[2] The tax, it is true, is imposed at the usual rate of the general property tax; but some of the difficulties of local assessments of property have been obviated. In a few of these cases, like California, Colorado and Missouri, the state boards assess the greater part of the property, like road-bed, rolling stock, *etc.*, but leave the remainder to be appraised by the local assessors. In most instances special rules are provided for the assessment of the track and rolling stock of roads that lie partly without the state, generally in the proportion which the state mileage bears to the whole mileage.

This first reform of railroad taxation has not been completely satisfactory, for reasons to be discussed later. The remaining fifteen commonwealths have therefore abandoned property as the basis of taxation, without reference to the manner of assessment. The methods adopted by them are comprised in the second of the three tendencies.

This second movement away from the property tax has consisted in subjecting special classes of corporations to special taxes on other elements than the general property. It will be well to discuss these classes in order.

R. I. Pub. Stat. chap. 27, sec. 1; Tenn. Code, § 617; Tex. Rev. Stat. § 4678; Utah Comp. Laws, § 2015.

[1] Ala. Code, §§ 494–503; Ariz. Rev. Stat. § 2649; Ark. Digest, §§ 5648–5653; Cal. Code, §§ 3627–3628, 3664–3666; Col. Gen. Stat. § 2847 and Acts of 1889, p. 317; Fla. Laws of 1887, c. 1, sec. 45; Ga. Code, Art. 4, § 826; Id. Rev. Stat. § 1463; Ill. Rev. Stat. (1889) c. 120, §§ 40–52, 109; Ind. Rev. Stat. §§ 6360–6372; Io. Rev. Stat. §§ 2016–2018; Kan. Comp. Laws, c. 107, art. 7; Ky. Gen. Stat. c. 92, art. 3; Mo. Rev. Stat. §§ 6865–6873; Neb. Comp. Stat. c. 77, §§ 39–40; N. H. Gen. Laws, c. 62, sec. 2; N. C. Machinery Act of Mar. 11, 1889, §§ 46–56; O. Rev. Stat. §§ 2770–2776; S. C. Gen. Stat. §§ 176–186; Va. Code, c. 51; W. Va. Code, c. 32, § 67; Wy. Rev. Stat. § 3839. In North Carolina if the road is not taxed on its property, it pays a tax on gross receipts. Revenue Act of Mar. 11, 1889, § 37.

[2] This is known as the board of railroad commissioners in Arkansas, board of railroad assessors in Kansas, board of assessment for railroads in Alabama, board of appraisers and assessors in North Carolina, board of public works in Virginia and West Virginia, and board of equalization in all the remaining cases except Florida, where the comptroller, attorney-general and treasurer act *ex officio* as assessors.

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1. *Taxation of Banks.*

The direct taxation of banks dates back to the beginning of this century. During the war with England the federal government imposed certain stamp duties on notes issued or discounted by banks. But the law contained the further provision that the banks might compound for the duty by paying one and a half per cent on the amount of the annual dividends.[1]

The first state law which levied a direct tax on banks was the Georgia act of 1805, which imposed a tax of two and a half per cent on the capital stock and one half of one per cent on the circulation.[2] So also the Massachusetts act of 1812 imposed a tax of one half of one per cent on the amount of the capital stock.[3] A more important law, however, was the Pennsylvania act of 1814. Pennsylvania from the very outset assumed an attitude different from that of the other states. According to this law[4] banks were taxed at the rate of six per cent upon their dividends or net profits; if exempted from the national tax, the rate was to be eight per cent. In 1824 the rate was definitely fixed at eight per cent.[5] A few years later the principle of progressive taxation was introduced. The act of 1834[6] imposed on banks of issue a tax on dividends, which varied from eight to eleven per cent as the dividends were under six or over eight per cent. In 1859 the law was extended to banks of discount and deposit.[7] In 1861 this graduated tax was increased so as to vary from eight per cent if the dividends were six per cent, up to thirty if the dividends were twenty-five.[8] Later on, however, the tax on dividends was replaced by the system now in vogue.[9] Ohio and Virginia were the only other states which began and for some time continued to tax banks on dividends. In Ohio a tax of four per cent on dividends was imposed in 1815.[10] But in 1816 the general banking law obliged the banks

[1] Law of Aug. 2, 1813; U. S. Statutes, III, 77. Repealed by the law of Dec. 23, 1817; Statutes III, 401.
[2] Ga. law of Dec. 4, 1805, p. 20. [3] Act of June 23, 4 Mass. Laws, p. 317.
[4] Pa. Session Laws, 1813–1814, chap. 98, § 10. [5] *Ibid.* 1824, chap. 47, § 24.
[6] *Ibid.* 1834, no. 66. [7] *Ibid.* 1859, no. 523. [8] *Ibid.* 1861, no. 473.
[9] Act of March 24, 1866. [10] Act of Feb. 3; Laws of Ohio, vol. 13, p. 132.

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to set aside profits which at the expiration of the charter would amount to four per cent of the total stock. In 1825 this was commuted into a tax of from two to four per cent on dividends.[1] In 1831 the rate was raised to five per cent.[2] In 1845 banks were required to pay in lieu of the tax on dividends, six per cent on the profits, deducting expenses and ascertained losses.[3] But five years later the taxation of profits or dividends was abolished. The banks were henceforth taxed at the general property tax rate on the amount of their capital stock and contingent fund.[4] In Virginia the dividends tax began later. In 1846 banks were required to pay one and a quarter per cent on dividends. The rate was gradually changed until during the Civil War it reached seventeen per cent. In 1870 a new system was introduced, based partly on capital stock, partly on income or dividends above $1500. But in the following year the present method was adopted.[5]

While Pennsylvania and Virginia were the only commonwealths to retain dividends as the basis of taxation, a few other states taxed banks on their capital stock. The Massachusetts tax of 1812, changed in 1828 to a tax of one per cent on the amount of the capital stock actually paid in,[6] remained the law practically without change until the Civil War, when the state banks were superseded by the national banks. The tax was in addition to the tax levied on the individual stockholders. Curiously enough, however, the tax applied only to the chartered banks, not to the free banks. In Louisiana a tax was imposed on the "stock in trade" of all banks in 1813.[7] In other states, again, a special tax was levied only on the proportion of the capital stock owned by non-residents, as in the first Connecticut law of 1830,[8] which imposed a tax of one third of one per cent. In many of the commonwealths, however, the special state taxation of capital stock came much later, as the

[1] Act of Feb. 5. [2] Act of March 12; Laws of Ohio, vol. 29, p. 302.
[3] Act of Feb. 24; Laws of Ohio, vol. 43, p. 24.
[4] Act of March 23, 1850; Laws of Ohio, vol. 48, p. 88.
[5] Va. law of Feb. 28, 1845, § 5; Apr. 7, 1853; Mar. 18, 1856; Mar. 28, 1863; July 9, 1870; Mar. 28, 1871. [6] Mass. Laws of 1828, ch. 96, § 21.
[7] La. Laws of 1812–13, p. 242. [8] Conn. Public Acts, 1830, chap. 28.

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principle of the property tax prevailed. When the capital stock was taxed at all it was simply as representing the personal property, and hence it was taxable locally at the general rate of the property tax. The real estate was taxed separately. Such was the case in New York, where the personal property tax was levied on bank stock and was payable by the corporation. According to the law of 1823, discussed above, the tax was assessed on the par value of the stock. But in 1847 the basis was changed to the actual market value of the stock, without deduction for debts.[1] It is worthy of note that in North Carolina, where the taxation of capital stock came much later, the rate of the tax varied with the dividends.[2]

Since the inception of the national banking system most of the commonwealths have again changed their methods of taxing banks. The history of this change can be well traced in the legislation of New York. According to the laws mentioned above, banks were taxable on so much of their capital stock as represented their personal property. Under these acts the banks claimed exemption for that part of their capital invested in United States bonds. This claim was disallowed by the court of appeals, on the ground that no unfriendly discrimination was hereby shown to the United States as a borrower.[3] In 1862, however, the national government provided by law for the total exemption from state taxation of all stocks, bonds and other securities of the United States.[4] The court of appeals held that this provision applied only to stock and bonds issued after the date of the law, but that all securities issued prior thereto were still taxable according to the state statute.[5] The Supreme Court of the United States reversed this decision, holding that any "stock of the United States constituting a part or the whole of the capital stock of the bank is not subject to state taxation."[6] The legislature then sought to evade this decision by enacting that banks should be taxable "on a valuation equal to the

[1] New York, Laws of 1847, ch. 419, § 4. [2] N. C. law of Feb. 16, 1859.

[3] People *ex rel.* Bank of the Commonwealth *vs.* Commissioners of Taxes, 23 N. Y. 192. [4] Act of Feb. 25, 1862, § 2.

[5] People *ex rel.* Bank of Commerce *vs.* Commissioners of Taxes, 26 N. Y. 163.

[6] People *vs.* Commissioners of Taxes, 2 Black, 870.

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amount of their capital stock," with similar deductions and exemptions as in the law of 1857.[1] The court of appeals pronounced this law valid, on the ground that the tax was one on capital stock and not on property. But the Supreme Court of the United States again reversed this decision, holding the tax to be one on the property of the bank, which was therefore entitled to deduction for non-taxable investments.[2] In 1864 the national banking act was passed, which permitted the taxation of national bank shares in the hands of individuals, but not at a greater rate than on other moneyed capital.[3] This gave the New York legislature the desired opportunity. In 1865 it enacted a law providing that all shares in national banks should be included in the valuation of the personal property of individuals.[4] And the court of appeals held this to be valid.[5] It must be remembered, however, that the state banks were still taxed on their capital. The Supreme Court of the United States now upheld the principle of the taxability of shares, on the ground that a tax on the shares in the hands of individuals was not a tax on the capital of the bank.[6] But it reversed the New York decision on a minor point, namely, that since the capital of state banks invested in national securities was exempt, a tax on the capital is not equivalent to a tax on the shareholders. Hence to tax state banks on their capital and shareholders of national banks on their shares, constitutes a discrimination against national banks. This decision led to the New York law of 1866, which abolished the taxation of bank capital and provided for the taxation of shareholders of both state and national banks in the same way, *i.e.* on the value of the shares, with deductions for the capital invested in real

[1] Laws of 1863, chap. 240, April 29. [2] Bank Tax Cases, 2 Wall. 200.

[3] Act of June 3, 1864, § 40 (Revised Statutes, § 5219): "Provided that nothing in this act shall be construed to prevent all the shares in any of said corporations [national banks] held by any person . . . from being included in the valuation of the personal property of such person, . . . but not at a greater rate than is assessed to other moneyed capital in the hands of individual citizens of such state, and provided that shares owned by non-residents shall be taxed in the city or town where the bank is located and not elsewhere." [4] Laws of 1865, chap. 97, March 9.

[5] City of Utica *vs.* Churchill, 33 N. Y. 161.

[6] Van Allen *vs.* Nolan, 3 Wall. 573.

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estate.[1] The banks were no longer taxed on their capital, but were required to retain the dividends from the stockholders until the tax was paid. The Supreme Court sustained this law, holding that no deduction should be made from the value of the shares for any part of the bank's capital which might consist of United States bonds.[2] And later on it decided the state tax on shares to be valid, even if it were collected from the banks.[3] The question then arose whether it was competent for the shareholder to deduct the value of his debts, as was the case in all other personal property. The court of appeals decided in 1867 in the negative, holding that there could be no deduction of debts from the assessment of bank shareholders.[4] This case slumbered for thirteen years. But in 1880 a decision involving this precise question was reversed by the United States Supreme Court on the ground that "the prohibition against the taxation of national bank shares at a greater rate than that imposed upon other moneyed capital could not be evaded by the assessment of equal rates of taxation upon unequal valuations."[5] The consequence was an alteration in the New York law, which now permits the same deductions as in all other taxable property and which provides for the assessment of shares, whether owned by residents or non-residents, at the place where the bank is located.[6]

The result of this development is that bank shareholders pay a large proportion, and in some towns the greater part,[7] of all the taxes on personal property, and that they alone are unable to evade the otherwise so laxly executed tax on personalty.

[1] Laws of 1866, chap. 761. "In making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank . . . in which any portion of the capital is invested in which such shares are held to the whole amount of the capital stock of such bank."

[2] People *vs.* The Commissioners, 4 Wall. 244.

[3] National Bank *vs.* Commonwealth, 9 Wall. 353.

[4] People *ex rel.* Cagger *vs.* Dolan, 36 N. Y. 59.

[5] People *ex rel.* Williams *vs.* Weaver, 100 U. S. 539.

[6] Laws of 1880, chap. 596, and 1881, chap. 361, practically included in the present law of 1882, chap. 409. See especially §§ 312, 315, 318.

[7] In Albany the banks paid 58 per cent of all taxes on personalty. New York State Assessors' Report, 1878, p. 16.

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The most recent attempt of the banks to remedy this obvious inequality has been frustrated by a decision of the Supreme Court that the words "moneyed capital," in the revised statutes, are practically confined to banks, and that the imposition of a lower rate of taxation on other corporations does not invalidate the bank tax.[1] I do not of course mean to plead that the banks should be treated tenderly or that they should be supported in their attempts to evade taxation. But it is a manifest incongruity that the bank shareholders almost alone among owners of personalty should be taxed. That they should be singled out for what is actually heavier taxation, is simply one of the absurd and unjust results of our general property tax. The only inference is the necessity of a comprehensive reform.

This system of taxing banks, whose development has just been sketched for the state of New York, is now general throughout the country, at least in those commonwealths which do not still cling to the method of the general property tax as applied to corporations. It may be summed up as the separate taxation of real estate plus the taxation of the shares in the hands of individuals, whose tax is generally paid by the bank and then withheld from the dividends. Some commonwealths have enacted more detailed provisions to avoid the confusion arising from the taxation of non-residents' stock. The Massachusetts law, for example, which dates back to 1868, provides that the assessors of a town where a national bank is located, shall omit from the town valuation all shares held by non-residents, and that the taxes paid by the bank on these shares shall be credited to the places where the owners reside.[2] In Connecticut the shares of non-residents are not taxed at the usual rate, but the banks themselves pay one per cent on the market value of such shares as a "non-resident stock tax."[3]

[1] Mercantile Bank *vs.* The Mayor, *etc.*, 129 U. S. 138. As to the national banks, see a criticism of this decision in the work of C. P. Williams, The National Banks and State Taxation, 1887. *Cf.* also the Digest of National Bank Cases, published yearly in the appendix to the Report of the Comptroller of the Currency.

[2] Mass. Session Laws, 1868, chap. 349, contained in Pub. Stat. chap. 11, sec. 33; chap. 13, secs. 12–19. The leading case upholding the validity of the statutes is Providence Institution for Savings *vs.* City of Boston, 101 Mass. 575.

[3] Conn. General Statutes, title 76, chap. 244, sec. 3915.

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A few commonwealths still tax banks directly on their capital stock at a special rate. In Pennsylvania the shares pay three mills on the dollar. But incorporated banks may elect to pay six mills on the par value of their capital stock in lieu of all other taxation except local taxes on real estate. This is universally done. The three per cent net earnings or income tax applies only to the unincorporated banks without capital stock.[1] In Kentucky, where the banks are taxed on capital and surplus, they waive all rights to a different mode or smaller rate of taxation.[2] In a few cases again we find a mixed system. Thus in Georgia banks are not taxed on their capital, but on their property, in so far as the value of the property is not represented in the market value of the shares. The shares are then taxable in the hands of the shareholders and the bank itself is further taxable on its surplus and undivided profits.[3] Finally, in some of the southern commonwealths, as North Carolina, we find in addition to a tax on bank shares a license tax fixed according to capital or to business transacted.[4] New York has a special law[5] taxing foreign banks at the rate of one half of one per cent on their deposits or moneys used in their business.

There remains the subject of savings banks. Generally these are not incorporated stock companies. In such cases several states, including all New England, tax them on their deposits. The rate ranges from one-quarter to one per cent.[6] In Massachusetts the system came into use in 1862. Prior to this time the deposits were nominally taxable as the personal property of the individual depositors. In other cases, as in New York, such deposits are expressly exempted from taxation.[7] But in New York, savings banks are then taxed on their surplus not

[1] Pa. act of June, 1889, §§ 25–27.

[2] Ky. Laws of 1886, art. ii, § 4.

[3] Ga. Laws of 1888, no. 123, sec. 9. The general question of taxing shareholders or capital stock will be discussed in the following essay.

[4] N. C. Revenue Act of March 11, 1889, sec. 30.

[5] N. Y. Laws of 1882, chap. 409.

[6] Conn. Gen. Stat. sec. 3918; Me. Rev. Stat. title 1, secs. 64–67; Md. Pub. Gen. Laws, art. 81, sec. 86; Mass. Pub. Stat. chap. 13, secs. 20–24; N. H. Gen. Laws, chap. 65, sec. 8; R. I. Pub. Stat. chap. 27, sec. 3; Vt. Rev. Laws, sec. 3593.

[7] N. Y. Laws of 1857, chap. 456.

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invested in United States securities, and the tax is declared to be one on the privilege or franchise.[1] In Pennsylvania savings banks are taxed on an entirely different principle, *viz.* three per cent on their net earnings or income. But this is true only if they are neither incorporated nor possessed of any capital stock. Otherwise they pay like other banks, six mills on the par value of their stock.[2] In most of the remaining commonwealths there is no special taxation of savings banks, unless they are incorporated. In Iowa in such a case the banks pay the usual property tax on their paid up capital, but deposits *etc.* are expressly exempt.[3]

In the matter of bank taxation, therefore, we are beginning to reach uniformity except in the case of savings banks. But the uniformity, so far as it exists, has been imposed upon the states by the national law. And the solution of the problem, as will appear later on, has not been an entirely satisfactory one.

2. *Taxation of Insurance Companies.*

The next class of corporations to break away from the general property tax were the insurance companies. At first, however, only foreign companies[4] were taxed. The earliest law was that of New York. The act of 1824 provided that foreign fire insurance companies should pay ten per cent on all premiums for property insured within the state.[5] In 1829 the law was extended to foreign marine insurance companies.[6] In 1837 the tax was reduced to two per cent.[7] Domestic companies were taxable on their capital stock, like all other corporations, according to the general law of 1828. Ohio indeed started out

[1] Laws of 1867, chap. 861. This law was repealed in 1875, but the repealing statute was itself repealed in 1882. *Cf.* Davies, Compilation of . . . the System of Taxation in New York, p. 90.

[2] Pa. act of June 1, 1889, secs. 27 and 25. [3] Iowa Rev. Stat. § 1815.

[4] The use of the term "foreign corporations" in the American statutes is confusing. Generally it designates corporations incorporated in another of the American commonwealths. In only a few cases does it refer to non-American states. In this essay it will be used in the former sense unless otherwise indicated.

[5] New York Laws of 1824, chap. 277. [6] Laws of 1829, p. 515.

[7] Laws of 1837, chap. 30.

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with insurance companies as with banks and in 1830 taxed them four per cent on their dividends.[1] But this form of taxation was soon abandoned. In Pennsylvania, where domestic companies were included in the general law of 1840, foreign insurance companies were not specially taxed until 1849, when the law imposed a tax of one per cent on the gross premiums of foreign life insurance companies.[2] In Maryland the custom dates from 1839, when a tax of two per cent was imposed on the premiums received by the agents of foreign insurance companies.[3] In Massachusetts the tax was first levied in 1832. This law is of special interest as the prototype of what is known in several of our commonwealths to-day as the "reciprocal act." The act provided that if any commonwealth taxed the agents of Massachusetts insurance companies, the insurance companies of such commonwealth were to pay one half of one per cent on the whole amount insured by such companies in Massachusetts.[4] The reciprocal acts at present go somewhat further and prescribe that foreign insurance companies are to be taxed at the same rate (if higher than the home rate) that is imposed on home insurance companies by the commonwealth chartering the foreign company. Such reciprocal acts are found at present in Connecticut, Illinois, Maine, Massachusetts and New York.[5] If the tax imposed by the foreign commonwealth is not higher, the foreign companies pay as a rule two per cent on premiums.

This premiums tax on foreign companies was gradually extended to domestic companies, until at present it is found in almost every commonwealth. Only a few of the western states still cling to the original custom of taxing them on their property. Occasionally the tax is known as insurance licenses or insurance fees. It sometimes happens that the companies must pay both fees and taxes.[6] In a few cases the principle of taxing premiums has been applied only to foreign companies, while

[1] Act of Feb. 22; Ohio Laws, vol. 28, p. 43.
[2] Pa. law of Jan. 24, 1849.
[3] Md. Laws of 1839, chap. 24.
[4] Mass. Laws of 1832, 140, § 1.
[5] Conn. Gen. Stat. § 3939; Ill. Rev. Stat. chap. 73, § 29; Me. Rev. Stat. title 1, sec. 63; Mass. Pub. Stat. chap. 13, secs. 30–31; N. Y. Laws of 1875, chap. 60, § 1.
[6] N. C. Revenue Act of 1889, sec. 29.

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home companies are still taxed on their property, assets or surplus.[1] Several commonwealths again tax foreign companies higher than home companies. Thus Maryland and Delaware tax the gross receipts of foreign companies only.[2] In Pennsylvania domestic insurance companies (except mutual companies) pay eight tenths of one per cent, and foreign companies two per cent on premiums.[3] In New York domestic life insurance companies are exempted from taxation, but foreign companies pay two per cent on premiums.[4] So again, while all fire and marine insurance companies pay the same tax for state purposes, the foreign companies alone pay an additional local tax.[5]

While the premiums tax is under the general tax, we find a few other instances where taxes are based on different elements. Some of the Southern and a few of the Western states impose license or privilege taxes of a fixed amount. Others combine various taxes. Thus, we find in Virginia the general property tax on a company's realty and personalty, a specific tax of $200, and an additional tax of one per cent on gross receipts in the state.[6] Massachusetts imposes on life insurance companies a tax of five mills on each thousand dollars insured, as compensation for the state valuation of policies, and a "license tax" of one fourth of one per cent on the net value of all policies. Other insurance companies pay an excise tax of one per cent on premiums and assessments; but non-American companies pay four per cent on premiums (or two per cent if there is a guarantee fund of $200,000). Finally, a special life insurance company is taxed on its funds, deducting deposits invested in mortgages.[7] Wherever the reciprocal law exists, as in Connec-

[1] Mo. Rev. Stat. §§ 6056–6057; N. J. law of April 18, 1884, § 4; Conn. Gen. Stat. secs. 3933–3935; Ala. act of Dec. 11, 1886, sec. 3.

[2] Md. Pub. Gen. Laws, art. 23; Del. law of 1885, chap. 423.

[3] Pa. act of June 1, 1889, sec. 24.

[4] N. Y. Laws of 1853, chap. 463, § 15; 1862, chap. 300, § 5; 1887, chap. 699.

[5] Laws of 1886, chap. 679; Laws of 1882, chap. 410, §§ 522–523.

[6] Va. Acts of 1883–84, chap. 450, sec. 18.

[7] Mass. Pub. Stat. chap. 13, secs. 25–28, 30–35; Acts of 1884, chap. 55; Pub. Stat. chap. 119, sec. 18; Acts of 1885, chap. 300. For statistics of these various taxes, see my monograph on Finance Statistics.

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ticut and Massachusetts, there is a highly diversified system of insurance taxation.

The tax on premiums is generally levied on gross premiums or on gross receipts. Sometimes, as in Alabama, Illinois, Maine, Missouri and Nebraska, the tax is on net receipts.[1] But in Illinois, Maine and Missouri only foreign companies are subject to this tax. In Indiana we find the seemingly curious distinction that home companies are taxed on net, and foreign companies on gross receipts.[2] But the taxes are really the same, because expenditures, losses paid and return-premiums are deducted, just as in Missouri. So also in Alabama the tax, while nominally on gross, is in reality on net receipts.[3] In Illinois the net receipts of foreign insurance companies are entered as personal property and are included in the general property tax. The companies are then free of all local taxes, except for the benefit of fire departments in cities, which may impose a tax not exceeding ten per cent on gross receipts. In most of the commonwealths the real estate of the companies is also taxable. Only in a few cases, like Maine, is the premiums tax in lieu of all other state taxation.

From the above summary it appears that life insurance companies, especially mutual companies, are in general treated differently from other insurance companies. The reasons are obvious and well founded.

3. *Taxation of Railroads.*

A history of the development of railway taxation would occupy a separate essay by itself. It will be possible here to say only a few words about some of the typical commonwealths.

In Pennsylvania, railroads were included in the general tax law of 1840, and were assessed on their personalty and on their dividends.[4] In 1844 the tax on personalty was abandoned.

[1] Ark. Digest, sec. 3829; Ill. Rev. Stat. chap. 73, § 30; Me. Rev. Stat. title 1, sec. 59; Mo. Rev. Stat. sec. 6057; Neb. Comp. Stat. chap. 77, sec. 38.

[2] Ind. Rev. Stat. § 6351.

[3] Ala. act of Dec. 11, 1886, sec. 3.

[4] Pa. Laws of 1840, no. 232.

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But the general corporation tax on capital and dividends continued with some modifications for over two decades.[1] In 1860 a special tonnage tax was levied on transportation companies at the rate of two, three and five cents per ton of freight carried, and an additional tax of three quarters of one per cent was laid on their gross receipts.[2] The tonnage tax was declared unconstitutional by the federal courts.[3] As a result all transportation companies were taxed by the act of 1874 only on their capital stock, at the rate of nine tenths of a mill for each one per cent of dividends. If there were no dividends the tax was to be six mills.[4] In 1879 the dividends and earnings taxes were slightly changed, and the law was passed[5] which, with the amendments of 1885 and 1889, is in force to-day. In New York, railroads were subject to the general property tax until 1880, when a law was enacted which with some modifications is now in force. In New Jersey, railroads were subject to the general property tax until 1873, when a tax was imposed at the rate of one half of one per cent on their cost, equipment and appendages.[6] But three years later the cost tax was abandoned, and a tax at the same rate was imposed on the true value of the roads.[7] This system prevailed until 1884, when the present method was introduced. In Connecticut, the law requiring certain stock companies to make returns of the stock owned by individuals was extended to railroads in 1846.[8] Three years later every railroad that had paid a dividend in the preceding year was required to pay one half of one per cent on the market value of the shares held by non-residents.[9] But if the railroad was partly out of the state, the tax was to be proportioned to the mileage in the state. This system worked so well that in 1850 it was extended to resident stockholders. The tax was made one third of one per cent and was in lieu of all other taxes.[10] In 1862 the rate was increased, but the provision was inserted

[1] Laws of 1844, no. 318, § 33; Laws of 1859, no. 523.
[2] Laws of 1868, no. 69, §§ 7–8.
[3] State Freight Tax Cases, 15 Wall. 232.
[4] Laws of 1874, no. 31.
[5] Laws of 1879, no. 122.
[6] N. J. Pub. Gen. Laws, 1873, chap. 400, p. 112.
[7] *Ibid.* 1876, chap. 101, p. 129.
[8] Conn. Public Acts, 1846, June 17.
[9] Law of 1849.
[10] Public Acts, 1850, chap. 58.

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that the stock should not be assessed at less than ten per cent of the par value.[1] In 1864 the outlines of the present system were drawn by requiring the companies to add to the valuation of the stock the market value of the funded and floating indebtedness less the cash on hand, and to pay one per cent on this valuation in proportion to the mileage in the state.[2] In 1871 it was provided that if the railroad paid any local tax this might be deducted from the state tax.[3] In 1881 a deduction was made from the taxable valuation for such portion of its debt as was contracted for stock taken in other roads.[4] In 1882 the funded and floating debts and bonds were to be valued at par unless the market value was below par.[5] And in 1887 the present law, with substantially the same provisions, was enacted.

So much for a hasty glimpse at some of the typical forms of development. Let us now study the actually existing chaos. For the remark of the railroad tax committee of 1879 still holds good to-day. that "there is no method of taxation possible to be devised which is not at this time applied to railroad property in some part of this country. A more discouraging example of general confusion could hardly be imagined."[6]

As was stated above, fifteen commonwealths have abandoned property as the basis of the tax. Of these fifteen cases, the majority now assess the railroads on earnings. Seven levy a tax only on gross earnings ranging from one quarter of one to five per cent.[7] Wisconsin, however, combines in some cases a mileage tax with the earnings tax. Washington formerly had a gross earnings law, but this was repealed in 1888.[8] Three commonwealths, Massachusetts, New York and Pennsylvania, include railroads in the general corporation tax. But New York and Pennsylvania levy an additional tax on gross earnings (one

[1] Public Acts, 1862, chap. 55, §§ 5 and 8. [2] Gen. Stat. (rev. of 1866), p. 717.
[3] Public Acts, 1871, chap. 89. [4] *Ibid.* 1881, chap. 153. [5] *Ibid.* 1882, chap. 139.
[6] Taxation of Railroads and Railroad Securities, p. 1.
[7] Dak. Laws of 1889, chap. 107; Me. Rev. Stat. title 1, sec. 42; Md. Pub. Gen. Laws, art. 81, sec. 146; Mich. Gen. Stat. chap. 91, § 3360; Minn. Laws of 1873, chap. 111, extended to all companies by Laws of 1887, chap. 11; Vt. Acts of 1882, no. 1, sec. 12; Wis. Annot. Stat. § 1213.
[8] Wash. law of 1883, repealed by Laws of 1887–88, p. 190.

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half and eight tenths of one per cent respectively),[1] while Massachusetts also levies a commission tax on gross earnings in proportion to mileage, and in the case of corporations to construct railroads in foreign countries substitutes a tax of one twentieth of one per cent on capital stock.[2] Mississippi taxes railroads at a fixed sum (from $25 to $125) per mile according to the reputed wealth or earning capacity of each road.[3] Delaware levies four separate taxes, *viz.* on capital stock (one per cent), net earnings (ten per cent), locomotives ($100 each) and passengers (ten cents each).[4] The companies may pay a gross sum in commutation of the passenger tax. In New Jersey, the law directs the board of assessors to ascertain the value of the main stem, of the other real estate and of the tangible personalty. This would really be a property tax were it not that the assessors are further directed to ascertain the value of the franchise. The whole question of corporate franchise will be deferred to the succeeding paper. But it may be stated here that the New Jersey assessors have endeavored to estimate the franchise by taking sometimes an arbitrary proportion (sixty per cent) of the surplus of the value of the capital stock and total indebtedness over the value of the tangible property, sometimes a percentage (twenty per cent) of the gross earnings. The railroads are then taxed one half of one per cent on this entire valuation, both property and franchise, for state purposes. In addition they also pay to the state a tax at the local rate on the value of their real estate in each taxing district outside of the main stem. But this portion of the tax, which is really a property tax, cannot exceed one per cent of the value, and is returned by the state to the taxing district.[5] In Connecticut, railroads are required to pay a tax of one per cent on the valuation of their capital stock and on the par value (or market value if below par) of their funded and floating debt above the amount in the sinking fund. If only a part of the railway is in the state, the company pays

[1] N. Y. Laws of 1880, c. 542; 1881, c. 361; Pa. Laws of 1879, c. 122, sec. 7.
[2] Mass. Pub. Stat. chap. 13, secs. 43 and 46; chap. 112, sec. 12.
[3] Miss. Laws of 1884, p. 23.
[4] Del. Laws, vol. 12 (1864), chaps. 458, 485; vol. 13, chap. 392.
[5] N. J. law of March 27, 1888.

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on such proportion of the above valuation as the mileage in the state bears to the total mileage. The value and length of such branch lines as are of less than one quarter the average mileage value of the trunk line are omitted.[1]

Among the commonwealths which assess railroads on their gross earnings, six grade the tax according to the age of the road or to the amount of the earnings. The rates per cent are as follows:

Dakota: First five years of operation, 3; afterwards, 2.
Minnesota:[2] First three years, 1; next seven years, 2; afterwards, 3.
Maine (excise tax): Earnings of $2250 per mile and under, ¼ of 1; thence increasing by ¼ of 1 for every $750 up to the maximum of 3¼.
Michigan (specific tax): $4000 per mile and under, 2; over $4000, 3.
Vermont: For the first $2000 per mile, 2; the first additional $1000, 3; the next additional $1000, 4; everything above $4000, 5.
Wisconsin (license fees): Less than $1500 per mile, $5 per mile; $1500 to $3000, the same plus 2 per cent on excess over $1500; $3000 and upward, 4 per cent. But all railroads upon pile or pontoon bridges are taxed uniformly at 2 per cent.

An important point in the treatment of railroads is the extent to which these new methods of state taxation have superseded local taxation. In four of the fifteen cases, *viz.* Connecticut, Dakota, Minnesota and Washington, the special railroad tax is declared to be in lieu of all other taxation, state or local. This is virtually although not technically true in Connecticut; for if the real estate not used for railroad purposes is taxable locally, the valuation on which the state tax is based is reduced by the amount of local taxes. In six of the remaining cases, *viz.* Delaware, Maine, Maryland, Massachusetts, Mississippi and New York, the localities may also tax railroad property. But here several points are to be noticed. In Maine, only the buildings of the railroad and the lands and fixtures outside the located right of way are taxable locally.[3] In Massachusetts the railroads are

[1] Conn. Gen. Stat. secs. 3919–3932.

[2] The Minnesota law of 1889, chap. 191, repealed the railroad tax law, leaving the matter to be decided by popular vote at the next election. As the elections are biennial, the proposition has not yet been acted upon.

[3] Me. Rev. Stat. title 1, sec. 4.

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taxable locally only on their real estate (except a belt of land adjoining the roadbed with the structures connected with it) and machinery.[1] But the value of this is deducted from the total valuation for the commonwealth tax. Strictly speaking, Massachusetts thus belongs in the preceding category. In Mississippi, only cities and towns have the privilege of taxing railroad property in general, but all localities may tax that part which is not used for railroad purposes. In New York, under the general corporation tax law, the real estate of railroads is taxable for state purposes, and both realty and personalty are taxable for local purposes. But only the value of the realty is deducted from the total valuation of the stock for the commonwealth tax. Finally, in the five remaining cases, *viz.* Michigan, New Jersey, Pennsylvania, Vermont and Wisconsin, the railroads are subject to a local tax only on that part of their property not used for railroad purposes. In New Jersey, this local tax must not be confounded with the "tax on the taxing districts" described above, which is in reality also a local tax. In Pennsylvania, all property necessary to the successful operation of the railroad has been held to be a part of the franchise, and therefore not locally taxable.[2] But in Wisconsin, railroad property, even though used for railroad purposes, may be assessed in cities and villages for local improvements only.[3]

Besides these fifteen commonwealths which have broken away from the old property tax, four states which retain this as the main feature add other taxes not based on property. Thus in Alabama we find a "license tax" on gross earnings, to defray the salary of the commission; in North Carolina a privilege tax of one half of one per cent on gross receipts (if only the personal property is taxed) and a franchise tax, at the general rate of the property tax, assessed on the value of the franchise as estimated by the board of appraisers; in Texas a tax of one quarter of one per cent on gross passenger earnings; in Virginia a tax on gross earnings, to pay the salary of the com-

[1] Inhabitants of Worcester *vs.* Western R. R. Co., 4 Metcalf, 566.
[2] Northampton Co. *vs.* Lehigh Coal and Navigation Co., 75 Pa. 461.
[3] Wis. Laws of 1882, chap. 258, sec. 14.

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mission, and a tax of one per cent on net income.[1] Some of the southern commonwealths impose special licenses on the railroads. Finally, we find in a few commonwealths special taxes levied on special railroads.[2]

This survey will suffice for a picture of the actual chaos. The theory and criticism must be left to the following essay.

4. *Taxation of Telegraph and Telephone Companies.*

The taxation of telegraph companies has undergone an evolution similar to that of railroads, although not quite so extensive. In the majority of commonwealths, telegraph property is included by the local assessor in the general tax list and pays the regular rate of the general property tax. In a few cases it is separately assessed by special officers, but still pays the general rate. In a few other cases again telegraph companies pay on the value of their property, but at a fixed rate which remains constant from year to year.[3] In nineteen commonwealths, however, telegraph companies pay a special tax based not on property but on other elements. The system of taxing gross receipts prevails in ten cases.[4] Five commonwealths tax the companies on mileage, the rate generally decreasing with each additional wire.[5] Mississippi imposes a privilege tax of $3000. But if the line is less than one thousand miles long, the tax is one dollar per mile. Tennessee grades the tax according to the population of the towns; Virginia levies a property tax, a one per cent gross earnings tax

[1] Ala. Code, § 1128; N. C. Laws of 1889, chap. 216, sec. 37; chap. 218, sec. 22; Va. Acts of 1883–84, chap. 450, sec. 20; and Code, § 1312.

[2] Del. Laws of 1873, chap. 368, and many subsequent laws referring to other railroads; Ill. Laws of 1851, p. 71, § 18; Pa. Laws of 1861, no. 100, p. 88; N. J. law of March 23, 1865; *cf.* third annual report of the N. J. state board of assessors for 1886, p. 23; N. C. Revenue Law of March 11, 1889, sec. 37.

[3] Me. Rev. Stat. title 1, sec. 48; N. H. Gen. Laws, chap. 62, sec. 14.

[4] Ga. Laws of 1888, no. 123, sec. 7; Ind. Rev. Stat., Elliott's Supplement (1889), § 2112; Minn. Gen. Stats. vol. ii, chap. 11, § 1313; N. J. law of April 18, 1884, § 4; N. Y. Laws of 1881, chap. 361; N. C. law of March 11, 1889, sec. 39; O. Rev. Stat. § 2778; Pa. law of June 7, 1879, sec. 7; R. I. Pub. Stat. chap. 27, sec. 10; Vt. Rev. Laws, § 3663.

[5] Conn. Laws of 1889, chap. 178; Dak. Acts of 1887, chap. 141; Del. Laws of 1889, chap. 460; Ky. Gen. Stat. chap. 92, art. 4, § 4; Wis. Annot. Stat. § 1216 a.

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and a license tax of $250; Alabama, a privilege tax of $500, together with a tax of one dollar per mile of line.[1] The tendency seems to be toward the mileage tax; for several commonwealths (*e.g.* Alabama and Connecticut) which formerly levied a gross receipts tax have now substituted the tax on mileage. On the other hand Minnesota, which formerly (since 1867) levied a mileage tax, changed it in 1887 to a gross receipts tax. This shows the utter lack of uniformity or principle in American taxation.

A special tax on telephone companies has lately been imposed in all but two of the same commonwealths. In ten cases, the tax is the same as that on telegraph companies.[2] In the remaining cases the tax is slightly different. Thus in Connecticut it is twenty-five cents per mile of wire and seventy cents for each telephone transmitter; in Georgia, one dollar for each telephone station or box; in Indiana and Kentucky, one per cent and one quarter of one per cent respectively on gross receipts; in New Hampshire, the usual property tax; in Mississippi, a tax graded according to the number of subscribers; in Wisconsin, a "license fee" of one and a half per cent on gross receipts; and in Virginia, a general property tax, a license tax of $100, and a gross earnings tax of one per cent.[3]

5. *Taxation of Express Companies.*

What has been said of telegraph companies applies almost equally well to express companies. Thirteen commonwealths tax them on gross receipts.[4] In Kentucky a license tax of $500

[1] Miss. Laws of 1888, chap. 3; Tenn. Code, sec. 617; Va. Laws of 1883–84, chap. 450, sec. 24; Ala. Acts of 1889, no. 103.

[2] Ala. Acts of 1889, no. 103; Me. Rev. Stat. title 1, sec. 52; Minn. Gen. Stat. vol. ii, chap. 11, § 131 h; N. J. act of April 18, 1884, § 4; N. Y. Laws of 1881, chap. 361; N. C. law of March 11, 1889, sec. 39; Pa. law of June 7, 1879, sec. 7; R. I. Pub. Stat. chap. 27, sec. 10; Vt. Laws of 1882, no. 1, sec. 23.

[3] Conn. Laws of 1889, chap. 178; Ga. Laws of 1888, no. 123, sec. 7, § 2; Ind. Rev. Stat. (1889), § 2116; Ky. Rev. Stat. chap. 92, art. 4, § 5; Miss. Laws of 1880, p. 17; Wis. Annot. Stat. § 1222 a; Va. Laws of 1883–84, chap. 450, sec. 24.

[4] Ala. Acts of 1889, no. 103; Conn. Laws of 1889, chap. 221, § 4; Dak. Acts of 1889, chap. 120; Del. Laws of 1889, chap. 461; Ind. Rev. Stat. (1889) § 2108;

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to $1000 is imposed in addition to the local property tax. In some of the other southern commonwealths a license tax of fixed amount is imposed. In Tennessee, this ranges from one to two thousand dollars according to mileage. In Virginia, express companies pay not only the general property tax, but also a tax of one per cent on income. In New Hampshire, they may pay, in lieu of the "license" on gross receipts, a fixed sum of five dollars per mile. In Ohio, they are taxed on gross receipts at the general rate of the property tax.[1]

From the fact that the large express companies are generally unincorporated, the question has frequently arisen whether they are liable to the corporation tax. In Vermont and Pennsylvania all persons or joint stock companies are expressly included in the law. In New Jersey the law applies only to corporations, to the manifest benefit of the unincorporated companies. In New York the liability of the express companies has recently been affirmed by the court.[2] There is of course no good reason for their exemption.

6. *Taxation of Palace Car Companies.*

The special tax on these companies, which is found in a few commonwealths, is based sometimes on gross receipts, sometimes on other elements. Thus we find in Alabama a privilege tax of five hundred dollars, together with one dollar per mile of track over which the sleeping car company operates; in Arkansas, a "public highway tax" of three dollars per mile; in Dakota, a tax of three per cent on gross receipts; in Georgia and Iowa, a tax at the usual rate on non-resident companies, proportioned to the number of cars and miles run; in Indiana, a tax of ten per cent on gross receipts; in Michigan a three per

Me. Rev. Stat. title 1, sec. 55; N. H. Gen. Laws, chap. 63, § 1; N. J. act of April 18, 1884, § 4; N. Y. Laws of 1881, chap. 361; N. C. act of March 11, 1889, sec. 39; Pa. act of June 7, 1879, sec. 7; R. I. Pub. Stat. chap. 27, sec. 11; Vt. Laws of 1882, no. 1.

[1] Ky. Rev. Stat. chap. 92, art. 4, § 6; Tenn. Code, sec. 617; Va. act of 1883–84, chap. 450, sec. 22; O. Rev. Stat. sec. 2778.

[2] People *ex rel.* U. S. Express Co. *vs.* Wemple. Decided in 1889.

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cent and in New Jersey a two per cent gross receipts tax on palace, parlor and sleeping cars; in New York a one half of one per cent and in Pennsylvania an eight tenths of one per cent gross receipts tax on palace and sleeping car companies, in addition to the general corporation tax.[1] In some of the southern commonwealths a license or privilege tax of stated amount is imposed.[2] In Virginia, however, the companies are taxed on their property at the usual rate and also one per cent on their income.[3] In some cases railroad companies are taxed for their sleeping cars, but may then recoup from the sleeping car companies.[4]

7. *Miscellaneous Taxes on Corporations.*

In addition to the taxes already mentioned, a few commonwealths levy taxes on other specified corporations. These are mostly of very recent date. In order to make the survey complete they will be noted here. We find in Alabama a tax of one per cent on the gross receipts of cotton pickeries and seed-oil mills; and on the gross income of gas-works, water-works, electric-light companies, ferries, toll-bridges, public mills and gins, and cotton compresses. But as the tax is levied only after deducting the expenses for carrying on such business, the tax is really on net income. In Connecticut there is a tax of two per cent on the gross receipts of rolling-stock companies. In Kentucky we find a tax on the stock of turnpike companies at the rate of seven per cent on net dividends; also a tax on gas companies and street railroads, as well as a "tax on city corporations," which is in reality simply a tax on coffee house licenses in Frankfort. In Louisiana there is a tax on the gross receipts of horse railroads. In Maine there is a similar tax, but with a graduated scale of one tenth of one per cent for every thousand dollars. In Massachusetts we find a tax of one

[1] Ala. Acts of 1889, no. 103; Ark. Laws of 1887, no. 128; Dak. Acts of 1889, chap. 120; Ga. Laws of 1888, no. 123, sec. 8, § 3; Ind. Rev. Stat. (1889) § 2120; Io. Rev. Stat. §§ 2023–2025; Mich. Gen. Stat. § 1228; N. J. act of April 18, 1884, § 2; N. Y. Laws of 1881, chap. 361; Pa. act of June 7, 1879, sec. 7.

[2] Tenn. Code, sec. 617.

[3] Va. Laws of 1883–84, chap. 450, sec. 22.

[4] Mo. Rev. Stat. § 6899; Ga. Laws of 1889, p. 34.

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twentieth of one per cent on the capital stock of mining companies (for the purpose of coal mining or extracting carbonaceous oils). If the company is incorporated in the state the tax is four per cent on the net profits. We find in Massachusetts also, a "gas commissioners tax" on the gross earnings of gas companies; a "gas-light companies tax" on the appraised valuation of their property to defray the expenses of the gas-meter inspectors; and a tax of one quarter of one per cent on the monthly dues (excluding fines and premiums) paid by shareholders of corporations, saving-fund and loan associations. In Michigan there is a special tax on mining, smelting and refining companies of seventy-five cents per ton of copper, one cent per ton of iron and five mills per ton of coal obtained. But the real estate of mining companies is taxed only on the excess over six hundred and forty acres. There is also a tax of two per cent on the gross receipts of special freight lines or car-loaning companies, and a like tax on the gross receipts of surety and guaranty companies. In New Hampshire there is a tax of one per cent on the stock of building and loan associations, and a like tax on the capital and deposits of trust companies and similar corporations. In New Jersey there is a tax of eight tenths of one per cent on the gross receipts of oil or pipe-line companies, and a tax on gas and electric-light companies of one half of one per cent on gross receipts and five per cent on dividends in excess of four per cent. In New York we find a "pool tax" on racing associations, — five per cent of the gross receipts for admission. In Pennsylvania, electric-light, street passenger railway, pipe-line, slack water navigation, canal or other transportation companies pay eight tenths of one per cent on gross receipts, in addition to the general corporation tax. In Rhode Island there is a tax of one quarter of one per cent on the deposits of trust companies. In Vermont we find a tax of one per cent on the deposits of trust companies, and of two per cent on the gross receipts of steamboat, car and transportation companies (other than railroads) incorporated in the state. In Virginia, steamship companies and transportation companies in general are taxed on their property and also at the rate of one per cent on their

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income.[1] Finally, in some of the southern commonwealths, license fees or "privileges" are imposed on corporations following certain specified lines of business.

The third movement away from the property tax noted above on page 275 has been the introduction of a tax applicable to all corporations in general. We come thus to

8. *The General Corporation Tax.*

Here again Pennsylvania took the lead. In that state the tax is far older than might be imagined from its recent introduction into other commonwealths. We have already seen that in 1824 Pennsylvania imposed a tax on the net dividends of banks. In 1836 the tax was extended to iron companies, at the rate of eight per cent on all dividends exceeding six per cent.[2] In this provision can be seen the germ of the later laws. The first general corporation tax was imposed in 1840. The law provided that "banks and all corporations whatever" which declared a dividend of one per cent, should pay "in addition to all present taxes" one half mill for each one per cent of dividend.[3] In 1844, however, an act was passed which sketched in broad outline the path of future development. According to this law all domestic corporations which make or declare a dividend or profit of at least six per cent, pay a tax on capital stock of one half mill for each one per cent of dividend. But if the dividend is less than six per cent, the tax is three mills on the dollar.[4] This law continued until the act of 1859. Thenceforward the three mill tax was paid only if no dividend was declared. In case of any dividend (not as before a six per cent dividend) the tax was one half mill on the capital stock for each

[1] Ala. Code, sec. 454, § 5; Ky. Rev. Stat. chap. 92, art. 4, §§ 1, 3; Me. Rev. Stat. title 1, sec. 47; Mass. Pub. Stat. chap. 13, secs. 24, 43 and chap. 61, sec. 7; also Acts of 1882, chap. 106, sec. 4, and 1885, chap. 314; Mich. Gen. Stat. §§ 1187, 1226, 1229 and Pub. Acts of 1885, no. 195; N. H. Laws of 1889, chaps. 12 and 55; N. J. law of April 18, 1884, § 2; N. Y. Laws of 1887, chap. 479; Pa. law of June 1, 1889, sec. 23; R. I. Pub. Stat. chap. 27, sec. 4; Vt. Acts of 1882, no. 1, sec. 25; Va. Laws of 1883–84, chap. 450, sec. 22.

[2] Laws of 1836, no. 194.

[3] Laws of 1840, no. 232, p. 612.

[4] Laws of 1844, no. 318, § 33.

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one per cent of dividend.[1] In 1864 it was provided that corporations not paying to the state a tax upon dividends should pay three per cent on net earnings.[2] The consolidated act of 1868 excepted from the general corporation tax only banks, savings institutions and foreign insurance companies (all of which were separately taxed), but imposed a tax of three per cent on the net earnings or income of all corporations, except those liable to the tonnage tax, *i.e.* the transportation companies.[3]

The important feature of the law of 1868, however, was that the corporation tax was now made applicable to all companies incorporated or doing business in the state, *i.e.* to foreign as well as to domestic corporations. Only from 1868, therefore, was the Pennsylvania tax a general corporation tax. The general law of 1874 made no change except in respect to transportation companies, as mentioned above,[4] and with the further exception that coal companies were to pay a franchise tax of three cents per ton transported.[5] In 1879 the line of division in the tax was again drawn at dividends of six per cent. That is, the principle of the law of 1859 was abandoned and that of 1844 reinstituted. Limited partnerships, except those organized for manufacturing or mercantile purposes, were put on the same footing as corporations, and the tonnage tax on coal companies was limited to 1881, after which it was to cease. A loan tax of four per cent was imposed, applicable also to the bonds of corporations.[6] In 1885 this tax was reduced to three per cent,[7] and in 1889 the present amendments were adopted.

Under the law as it now stands in Pennsylvania,[8] the "tax on corporation stock" applies to all corporations, joint stock associations and limited partnerships, except banks and savings institutions, foreign insurance companies, and manufacturing companies organized exclusively for manufacturing purposes and actually carrying on manufacturing within the state. But corporations engaged in the manufacture of malt and spirituous or

[1] Laws of 1859, no. 523, p. 529.
[2] Laws of 1864, p. 218.
[3] Laws of 1868, no. 69, §§ 4 and 6.
[4] Page 288.
[5] Laws of 1874, no. 31.
[6] Law of June 7, 1879.
[7] Law of June 30, 1885.
[8] Law of June 1, 1889.

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vinous liquors, and such as enjoy and exercise the right of eminent domain, are not included in this exception. The rate is one half mill for each one per cent of dividend, if dividends amount to six per cent, and three mills when dividends are less than six per cent. If any profit has been added to the sinking fund, it is treated as if it had been devoted to dividends, unless it is set apart expressly for the payment of debts. In addition to this tax on corporation stock, there is a nominal tax of three per cent on the net earnings of private bankers and brokers, unincorporated banks and all corporations except those liable to the previous tax or to the tax on gross receipts. The only corporations which would be liable under this provision are banks and manufacturing corporations. But manufacturing corporations, with the exceptions just noted as liable to the tax on corporation stock, are now expressly exempt from all taxation; and banks, by electing to pay six mills on the par value of their capital stock, may be exempt from all other taxation except on their real estate. Thus the net earnings tax does not apply to corporations at all. Finally, the "tax on loans" exacts three mills on the dollar of all mortgages, debts, shares of stock in banks, trust companies, *etc.*, and on all public loans (except those of Pennsylvania and the United States). It has been judicially decided that the tax is unconstitutional when applied to mortgages held by or in the hands of corporations.[1] This decision has lately been formulated into the law that corporations and associations liable to the capital stock tax shall not be required to pay any further tax on mortgages, bonds or other securities belonging to them and which constitute any part of their assets included within the appraised value of their capital stock. But if they hold these bonds in a fiduciary capacity they are liable.[2] On the other hand so much of the tax as is imposed on the loans *made by* corporations, *i.e.* on corporate obligations, has been upheld by the courts.[3] The treasurers of corporations therefore pay the tax on all bonds or obligations issued by the corporations which are held by residents, and then deduct the

[1] Fox's Appeal and Sanderson's Appeal, 112 Pa. Stat. 337. [2] Act of 1889, § 21.
[3] Commonwealth *vs.* Delaware Division Canal Co., 123 Pa. 594.

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tax from the amount of interest due. It is to be noticed that Pennsylvania taxes public as well as private corporations.

In addition to Pennsylvania the general corporation tax is found only in New York; although in Massachusetts and New Jersey there is a general tax on domestic corporations, and in three other cases, *viz.*, Alabama, Illinois and Maryland, there is what may be called in one sense a general tax on corporations.

In New York the general corporation tax came later. Not until 1880 was a law passed which was based on the Pennsylvania act. The tax[1] is declared to be a tax on the corporate franchise of all corporations, joint stock companies or associations, except savings banks and institutions for savings, fire and marine insurance companies, banks, foreign insurance and banking companies, agricultural and horticultural companies, and manufacturing and mining corporations wholly engaged in carrying on manufacturing or mining in the state. But gas and trust companies, and electric or steam heating, lighting and power companies are not included in the exception; while banks, fire and marine insurance companies, and foreign insurance companies, are separately taxed. So that the only companies exempted from taxation are domestic life insurance companies, agricultural and horticultural companies, and manufacturing and mining corporations with the exceptions noted. The rate is just one half that of the Pennsylvania tax, *i.e.* one quarter mill upon each dollar of the capital stock for each one per cent of dividends which amount to at least six per cent. For less dividends the tax is one and a half mills. An exception is made in the case of hotel companies. If their dividends are less than six per cent, the tax is assessed on the excess of the capital stock over the assessed valuation of the real estate.[2] Corporations subject to the tax are exempted from all further state taxation except on their real estate. But they are liable to local taxation on their whole property, both real and personal, according to the primitive methods. The additional taxes on

[1] Laws of 1880, chap. 542: amended by laws of 1881, chap. 361; 1882, chap. 151; 1884, chap. 353; 1885, chaps. 359 and 501; 1886, chap. 679; 1889, chap. 353.

[2] Laws of 1886, chap. 592.

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other corporations have been described under the appropriate heading.

In Massachusetts the general corporation tax dates from 1864. In 1863 indeed, a law was passed taxing dividends paid by corporations to non-resident stockholders.[1] But this was pronounced unconstitutional,[2] and was replaced by the law virtually now in force.[3] The tax is declared to be levied on the corporate franchise of all domestic corporations except banks and coal and mining companies, which are separately provided for. The tax is imposed on the market value of the shares of the capital stock, deducting the value of the real estate and machinery, which are locally taxable. The rate is determined by an apportionment of the whole amount to be raised by property taxes in the commonwealth during the year, upon the aggregate valuation of all the towns and cities for the preceding year. Every municipality is then credited with the proportion of the tax represented by the number of shares held by residents of that place. The commonwealth then retains only that proportion of the tax which corresponds to the stock of non-residents. In the case of railroads, which are also taxed under this general law, only such portion of the valuation of the stock is taken as is proportional to the length of that part of the road lying within the commonwealth. A very important point to be noticed is that in Massachusetts the tax applies only to domestic corporations, not to foreign corporations as in New York and Pennsylvania. Foreign corporations are taxed only on their property locally owned. Massachusetts therefore has in reality no general corporation tax.

In New Jersey the tax on "miscellaneous corporations" dates from 1884 and is described as a "license for the corporate franchise." It applies to all corporations except railroads and canals (both of which are taxed separately), banks, religious, charitable or educational associations, and manufacturing or mining companies which carry on business in the state. Certain classes of corporations, as stated above, are taxed under this law in a

[1] Mass. Laws of 1863, chap. 236. [2] 11 Allen, 268.
[3] Laws of 1864, chap. 208; 1865, chap. 283. *Cf.* Public Stat. chap. 13.

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special manner, *i.e.* on receipts, premiums and dividends. These, it will be remembered, are telegraph, telephone, cable, express, gas, electric-light, insurance, oil and pipe-line companies. All others pay a yearly "license fee" or tax of one tenth of one per cent on the capital stock.[1] Here again the tax applies only to domestic corporations, except in the case of insurance companies. It is to be borne in mind that railroad companies are not included in this tax on miscellaneous corporations.

In Maryland the "tax on incorporated institutions" dates in one sense from 1841. In that year all domestic corporations which declared dividends were required to return the stock owned by non-residents, and to pay the state general property tax thereon to the collector of the place where the corporation or its chief office was situate.[2] In 1842 this obligation was extended to resident stock.[3] In 1847 the corporations were required to pay the state tax on capital stock, whether or not they had earned dividends. The county tax was still collected from the shareholder.[4] Early in the seventies the system was slightly changed;[5] in 1878 the present method was introduced, and the office of tax commissioner created. The tax is levied on the capital stock or, if there be none, on the property and assets of all corporations incorporated or doing business in the state, and of all joint stock companies doing business in the state, except steam railroads and savings institutions, both of which are taxed separately. Deductions are made from this valuation for the assessed value of real property (separately taxed), for the capital invested in property which already pays taxes, for the non-taxable securities held and, in the case of building associations, for mortgages on taxable property. The rate is the common rate of the general property tax. The corporations pay on only so much of the stock as is owned by residents of the state.[6] In addition to this tax, corporations are also required to pay the general property tax on all interest-

[1] N. J. act of April 18, 1884. [2] Md. Laws of 1841, chap. 23, § 17.
[3] Laws of 1842, chap. 281; Supplement, 1843, chap. 289.
[4] Laws of 1847, chap. 266, § 5.
[5] Laws of 1872, chap. 90; 1874, chap. 483, §§ 83–87, 145–148.
[6] Md. Pub. Gen. Laws, art. 81, secs. 84–85, 141–144.

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bearing bonds, certificates or evidences of debt, owned by residents. The tax is deducted from the interest due the bondholders. This law dates from 1847, but is now applicable only to such of the bonds as are owned by residents of the state.[1] The corporation taxes in Maryland therefore have only a very limited scope.

In Illinois all corporations except railroads (which are separately taxed) and manufacturing, newspaper and stock-holding companies are assessed on the excess of their capital stock and debt over and above the value of their tangible property. But the capital stock tax is regarded as a part of the general property tax, and figures among its receipts.[2]

Finally, in Alabama there is a tax at the rate of the property tax on the capital stock of all corporations, companies or associations, except such stock as is invested in property already taxed. As a result of this exception the proceeds are very insignificant. There is also a tax, dating from 1866, on the dividends of all corporations doing business in the state. The dividends, however, are simply classed as personal property and hence the tax yields almost nothing.[3] There was formerly also a tax on the incomes of corporations.[4] But this seems to have been rarely assessed.

It may also be mentioned that Virginia had a general corporation tax for a short period. In 1843 a tax of two and a half per cent was imposed on the dividends of all corporations, except as to the stock held outside of the state. In 1846 the tax was reduced, and was then allowed to disappear. During the Civil War a tax was imposed on steamboat companies and "companies of a similar character." This law defined capital as stock subscribed, money deposited, and bonds, certificates and

[1] Md. Pub. Gen. Laws, art. 81, secs. 87–88. *Cf.* Laws of 1847, chap. 266, § 9.

[2] Ill. Rev. Stat. (1889), chap. 120, sec. 3, § 4.

[3] Ala. Code, sec. 453, §§ 9, 12. *Cf.* law of Feb. 22, 1866, § 2; Dec. 31, 1868, § 12; March 6, 1876, chap. 3, § 5.

[4] Laws of Feb. 19, 1867 (sec. 3), March 19, 1875 (sec. 11) and March 6, 1876 (sec. 4) imposed an income tax on persons, which was held to include corporations. 64 Ala. 277. The tax was abolished in 1884.

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other evidences of debt. The tax was thus really one on stock plus total indebtedness.[1]

We see then that only in Pennsylvania and New York is there a general corporation tax applicable to foreign as well as to domestic corporations. In Maryland the corporation tax, although nominally applicable to foreign corporations, is in reality levied almost exclusively on domestic companies. In the other cases, the law applies in terms only to domestic corporations. In Maryland and Massachusetts, again, the tax is really a general property tax on shares of stock, paid by the corporation. The important questions that have arisen in connection with these points will be discussed in the following essay.

A mistake often made is that of confounding with the corporation tax what may be called *the tax on corporate charters.* This is in reality a license fee charged for the privilege of incorporation or of increasing the capital stock. It is generally a lump sum proportioned to the amount of the capital or a percentage on the stock. The tax is found in nine commonwealths, most of which already possess a corporation tax proper. In Connecticut it is called the "tax on corporate franchise," although it is quite unlike the corporate franchise taxes in other commonwealths. It applies only to foreign corporations seeking a charter in the state. In Maine it is called the "tax on new corporations;" in Missouri, the "corporation tax" or the "tax on corporations incorporating;" in New Hampshire, "charter fees;" in New Jersey, the "tax from certificates of incorporation;" in New York, the "organization of corporations tax," although payable also on subsequent increase of the capital stock; in Pennsylvania and Rhode Island, the "bonus on charters;" in West Virginia, "license tax on charters and certificates of corporations." Here, however, it is paid annually.[2]

[1] Va. Laws of 1842–43, p. 10, § 11; 1845–46, p. 7, § 5; law of Mar. 28, 1865, § 6.

[2] Conn. Gen. Stat. secs. 1912–1916; Me. Rev. Stat. chap. 48, sec. 18, and Public Laws of 1887, chap. 90; Mo. Const. art. 10, sec. 21, also Rev. Stat. sec. 2493; N. H. Gen. Laws, chap. 13, sec. 5; N. J. Public Laws of 1883, p. 62 and Supplement Rev. Stat. p. 149; N. Y. Laws of 1886, chap. 143; Pa. Laws of 1868, sec. 15, p. 113; Laws of 1874, sec. 44, p. 107; R. I. Pub. Stat. chap. 27, sec. 15; W. Va. Code, chap. 32, secs. 86–92, as amended by Laws of 1887, chap. 29.

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These taxes have really nothing in common with the corporation taxes properly so called.

III. *Principles of the Tax.*

The summary just presented is supposed to be exhaustive. At all events it is ample to show the chaos of principle in which the whole subject is involved. An analysis of the facts discloses no less than thirteen main methods of taxing corporations, not counting the various combinations of method which are practised in some states. The bases on which the tax is assessed are as follows:

1. *Value of the property, i.e.* the realty plus the visible and invisible personalty. This was originally the universal method and it is still the practice in the great majority of cases.

2. *Cost of the property.* This was the general rule as to all railroad companies in New Jersey from 1873 to 1876, and is still the rule in isolated cases. The same rule prevails to-day in New York in the local taxation of telegraph companies.[1]

3. *Capital stock at par value.* This is true of the general corporation law in New Jersey; of mining companies in Massachusetts; and of banks and savings institutions in Pennsylvania.

4. *Capital stock at market value.* This is true of the general corporation law in Massachusetts, and of corporations in New York and Pennsylvania where the dividends are less than six per cent. It was also true of railroads in Connecticut between 1849 and 1864.

5. *Capital stock plus bonded debt at market value.* This is true of all corporations in Maryland (with certain restrictions) and of railroads in Georgia and Illinois. In the case of railroads in New Jersey and of other corporations in Illinois, only the surplus of this valuation over the value of the tangible property is made the basis of the tax. In Maryland only the surplus over the value of the real estate is taxable as capital stock.

[1] N. Y. Laws of 1853, chap. 597.

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6. *Capital stock plus total debt, both funded and floating.* This is true of railroads in Connecticut. It was true of steamboat companies and similar corporations in Virginia during the Civil War.

7. *Bonded debt or loans.* This was true of railroads and canals in Virginia from 1872 to 1874.[1] It is true now of all corporations in Maryland and Pennsylvania. It is urgently recommended by the comptroller of New York. In all these cases, however, it is only supplementary to the tax on capital stock.

8. *Business transacted.* This is true in several states of savings banks taxed on their deposits; of foreign banks in New York; of trust companies in New Hampshire and Vermont taxed on deposits; of insurance companies in Connecticut and Massachusetts taxed on the amount insured; of telephone companies in Connecticut and Georgia taxed on the number of telephone transmitters; of sleeping car companies in Georgia and Iowa taxed according to the number and mileage of cars; of railroads in Delaware taxed on the number of locomotives and passengers; of mining and smelting companies in Michigan taxed on tonnage. It was also true in Pennsylvania of railroads from 1868 to 1874, and of coal companies from 1868 to 1881, taxed on tonnage; and of boom companies from 1870 to 1889 taxed on the number of logs rafted.[2]

9. *Gross earnings.* This is true in most of the states of insurance companies taxed on gross premiums, and of transportation and other companies in a very large number of cases.

10. *Dividends.* This is true of gas and electric-light companies in New Jersey, of turnpike companies in Kentucky and of corporations in general in Alabama. It was formerly true of banks and iron companies in Pennsylvania, and of banks and insurance companies in Ohio and Virginia.

11. *Capital stock according to dividends.* This is true of all corporations in New York and Pennsylvania, when the dividends

[1] Va. Laws of 1872, chap. 385, § 8.

[2] One hundred dollars per hundred thousand logs rafted. Law of April 6, 1870, repealed by law of June 1, 1889.

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are at least six per cent. It was formerly true of banks in North Carolina.

12. *Net earnings.* This is true of railroads in Delaware and Virginia; of insurance companies in Alabama, Indiana, Maine and Nebraska; of foreign insurance companies in Illinois, Missouri and New Jersey; of express and sleeping car companies in Virginia; of mining companies in Massachusetts; of savings banks without capital stock in Pennsylvania; and of gas-works, water-works, electric-light companies, ferries, toll-bridges, public mills and gins, and cotton compresses in Alabama.

13. *Franchise.* This is true of a large number of cases. But the term franchise denotes nothing definite, as we shall see, and the value of the franchise is measured by each one of the preceding twelve tests except that of property.

So much for the existing confusion. It is plain that we are still groping in the dark and that no one method has yet commended itself to the American sense of justice and expediency. In the next paper we shall learn the judicial interpretation put upon these various methods, and shall attempt to analyze the situation from the economic point of view. That some change is imperative seems evident. Precisely what the change should be can be ascertained only after the most careful consideration. This is the complicated problem that confronts us.

EDWIN R. A. SELIGMAN.

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WELLS' RECENT ECONOMIC CHANGES.

IN the March number of the POLITICAL SCIENCE QUARTERLY Professor Patten of the Wharton School of Finance and Economy criticised what he considered serious errors in logical method in Mr. David A. Wells' *Recent Economic Changes.* It is of importance to know whether these are errors or not, since Mr. Wells' book, from the nature of the subject with which it deals, if for no other reason, is likely to have a wider circulation than is commonly accorded to economic treatises.

The first exception taken by Professor Patten on the score of logical method is to pages 124 and 125. For the sake of clearness and fairness, we will first lay before the reader the passage criticised and then examine the objections made to it. Mr. Wells says :

> Preliminary to entering upon any review of this vexed question, a consideration of the following general propositions may possibly help to a determination of opinion in respect to it: *First.* It is a universally accepted canon, alike in logic and common sense, that extraordinary and complex agencies should never be invoked for the explanation of phenomena, so long as ordinary and simple ones are equally available and satisfactory for the same purpose. *Second.* The most natural presumption, and the one which the commercial world most readily accepts, is that when *an article* under free competition declines in price, the supply has outrun the demand; not of demand in the abstract, for in a certain sense there is no limit to the demand for useful and desirable things, but of demand at the pre-existing price. If this presumption is not correct, then the hitherto universally accepted influence of the law of supply and demand on prices has been entirely misunderstood, and belief even in any such law may as well be abandoned. On the other hand, if the presumption is correct, then any cause, other than a disturbance of pre-existing relations of supply and demand, capable of occasioning a decline in prices, must of necessity be an extraordinary one, and demanding evidence, not general, but specific and clear in the highest degree, as a prerequisite to a belief in its actual occurrence and influence. Now, as to the character of the evidence that can be

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adduced in support of the two great causes respectively to which the decline in prices has been mainly attributed, it is not to be denied that the evidence pertaining to the first can, either with or without statistics, be stated with precision; while the evidence pertaining to the second is at best indefinite, and mainly conjectural. In other words, the "*how* of the depression of prices," as Professor Lexis, of Göttingen, has happily expressed it, through a lowering of the cost of production and transportation, and a widening of the area of cultivation, is clear to all; but the *how* of the effect of the enhancement in value of one description of money no one has, thus far, proved to us *in concreto*. If any one "affirms a connection between the prevalent low prices and the assumed appreciation of gold arising from scarcity, let him explain the *modus operandi;* let him set forth the process of reasoning; the motive which impels a seller to accept, except upon the issue of the struggle between supply and demand, a lower price for his goods in the face of an abundance of capital and a low rate of interest." [1]

I presume that if this passage were presented to the recognized economists of the world, nine out of ten would give their unqualified assent to it. If we confine our list of recognized economists to those holding chairs of political economy in colleges and universities, the proportion would be no less. Until I saw Professor Patten's objection I should have said with confidence that nobody could be found to dispute so plain a proposition.

Observe that Mr. Wells says: "The most natural presumption, and one which the world most readily accepts, is that when *an article* under free competition declines in price the supply has outrun the demand," — not all articles but some particular article. That he did not mean all articles when he said "an article" is made plain by the next succeeding paragraph, in which, to show the causes which have disturbed pre-existing relations of supply and demand, he selects for treatment twenty-three articles, which are divided into two groups. The dividing line of the groups is between certain articles concerning which the evidence of new relations of supply and demand is very clear and decisive, and others as to which it is more or less inferential and circumstantial. Nothing could be more

[1] The quotation is from Lord Addington.

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patent than that Mr. Wells did not mean all articles when he said "an article."

The criticism upon this passage has no other force or point than what is derived from the assumption that he meant something different from what he said. As the readers of this paper are presumed to have the whole of Professor Patten's article within reach, I will reproduce only the words which embrace the gist of his answer to the passage quoted from Mr. Wells, *viz.:*

> Yet this method of accounting for *the general fall of prices*, natural as it may seem to Mr. Wells, has never been used before the present bimetallic discussion. The whole subject of the changes in the value of the precious metals has occupied the attention of economists for the last two hundred years; and in every such discussion until the present time, the assumption has been that if prices *as a whole* have fallen it was a result of the appreciation of the value of money. It is almost comical, therefore, to see Mr. Wells, in the face of the whole economic discussion of the last two centuries, setting up a new point of view, not yet a dozen years before the public, as the natural one. Does it need any more proof to show that the attempt to distinguish between the ordinary and the extraordinary, or the natural and the artificial, is of no value in arriving at correct logical conclusions?

As it is not to be presumed that Professor Patten has intentionally misrepresented Mr. Wells, it becomes not only almost but altogether comical to find an economist lecturing his brother economist about logical method, with such a sample as this for illustration. The "attempt to distinguish between the ordinary and the extraordinary, or the natural and the artificial," here spoken of as being of no value in arriving at correct logical conclusions, refers to Mr. Wells' idea that, if the price of crude petroleum, for instance, has declined eight cents per gallon in a given period, and if the production of it is found to have increased in the same period from 9,000,000 barrels to 28,000,000 barrels per year, then the ordinary and simple explanation would be that the supply has outrun the demand, and that this explanation should be preferred to any extraordinary and complex one. Bad logic, thinks Professor Patten, "because it does not give any criterion by which to distinguish an extraordinary

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or complex agency from an ordinary or simple one." Another man, he conceives, may say that the increased production of oil is the extraordinary and complex agency, and scarcity of gold the ordinary and simple one. If this is mere logomachy it may be passed by. If it means that the over-production[1] of an article is not a more simple and rational explanation of a fall in its price than the state of the circulating medium, it is the same as saying that a demonstrable cause is no better than an undemonstrable one.

In the closing section of the paragraph to which I have referred [continues Professor Patten] Mr. Wells makes the serious mistake of confusing the abundance of capital and a low rate of interest with an abundant supply of money. From the approving manner in which he quotes Lord Addington he seems to affirm that there can be no appreciation of the value of money so long as there is an abundant supply of capital and a low rate of interest.

Then we are favored with a brief homily on the difference between money and loanable capital.

How far a writer is bound by the quotations he makes from other writers, is a question that calls for separate treatment in each separate case. It is fair to presume that Mr. Wells is acquainted with Wayland and other horn-books that were in use in our colleges forty years ago, in which the distinction between money and loanable capital was fully explained. Whether Lord Addington is acquainted with the difference we cannot know without having the full text of his discourse before us. Assuming that Mr. Wells is not wholly unmindful of it, we might suppose that, finding in Lord Addington's paper something that coincided with his point of view as to what price-causes can and what can not be readily explained, he rather hastily quoted it, not thinking that he would be held responsible for the remoter consequences of Lord Addington's reasoning. But does Professor Patten succeed any better than Lord Addington in expounding the matter in hand? His criticism ends with these words:

[1] By over-production is meant, of course, production in excess of demand at pre-existing price.

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Capital may grow and interest may fall at the same time that money is becoming scarce. In what way would Mr. Wells account for the fall in currency prices at the close of the Civil War except by a change in the relation of the quantity of paper money to the volume of business?

I do not know what Mr. Wells would say to this, but I should say that, inasmuch as the paper money was based on government credit, the fall in currency prices at the time mentioned was due to an improvement of that credit. The Civil War closed about the middle of April, 1865. On the first of January in that year gold was quoted at 226. On the 10th of April it was at 144, and there had been *no* "change in the relation of the quantity of paper money to the volume of business."

But is it true that capital may grow and *interest may fall* at the same time that money is becoming scarce? Every banker will deny that proposition as a matter of fact within his own observation and experience; and as political economy is the arrangement and correlation of observed facts, political economy denies it also. Capital is the very thing that buys money, and no country which has abundance of capital can fail, except momentarily, to have corresponding abundance of money. There is no criterion as to whether money is becoming scarce except the rate of interest. Scarcity of money may be produced either by exporting it or by locking it up. In either case it is withdrawn from the loan market, and interest must rise. In the case of a beleaguered town interest might fall at the same time that money was becoming scarce by hoarding, there being no employment for it; but that would not be a case where capital was growing, which the hypothesis requires.

We come next to Mr. Wells' statement that there is a class of commodities, the prices of which "have not in recent years experienced any marked degree of change." These articles are mainly such as are produced by hand; and the argument or suggestion is that, while in articles produced by continually improving machinery we should expect to find a fall in prices, the same would not be true of wares for whose production new and more expeditious processes have not been devised. A con-

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siderable list of such articles is given. The comment of Professor Patten upon this is as follows:

> Now gold is a product of manual labor and belongs to the latter class, not to the former. Gold is obtained in the same way as formerly. There have been no changes in the methods of producing it. Hand labor still washes the gold from the sand, and its value must be determined by the value of the labor. Labor having increased in value as Mr. Wells claims (page 361), we should expect to find as a result that the value of gold in the market would be greater than formerly.

I confess I am so dull as not to see the point of this reasoning; but whatever it may be, I take issue on the facts at once. One half in value of all the bullion produced by the great Comstock lode, probably the greatest deposit of the precious metals ever discovered, was gold; and this was all produced by machinery. There was no washing by hand labor at all. All or nearly all the South African gold mines are now worked by machinery, and the best of this machinery is made in the city of Chicago. And are we to call the gravel washings of California, operated by gigantic flumes that have cost hundreds of thousands of dollars, "hand labor"? This is not very important except as throwing a side light on the qualifications of Mr. Wells' critic. I find it in the way, and I brush it out of the way for better or for worse.

We now approach a very abstruse question. "*How prices are depressed*," says Professor Patten,

> is not an independent proposition to be treated alone. It can be solved only after knowing *how prices are fixed*. That the scarcity of gold lowers prices is a deduction from the well-known facts upon which the laws relating to the value of money depend.

That a scarcity of air causes death is also a deduction from the well-known facts upon which the laws of human life depend. Suppose that a man dies and A says that it is perfectly plain that he died of small-pox, and B says that since he stopped breathing there may have been a deficiency of air. A replies that there is no such thing as a deficiency of air. Mr. Wells does not deny absolutely that there may be a scarcity of gold. He does not believe that there is any, and he gives his reasons

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for thinking that there is none. Then, in addition, he gives his reasons for thinking that the twenty-three commodities have declined in price by reason of ascertainable facts affecting their production and transportation. Is there anything in this calling for the magisterial advice that he should first learn how prices are fixed? It is worth noting here that since the stock of gold is an increasing quantity — the yearly supply being added to the old store — it is for the believers in scarcity to prove their case.

A little farther on in the same paragraph we read:

> Perhaps, however, the best proof of the fact that a change in the quantity of money affects prices comes from the history of paper money. There is in this history an abundance of facts showing that the quantity of money is an important element in fixing prices, and Mr. Wells must transfer his battle to the causes fixing prices in these cases before the facts of his opponents can be called into question.

There appears in many parts of Professor Patten's article a suggestion of wide gaps in Mr. Wells' acquaintance with economic literature, which his critic would have no difficulty in supplying. The question of relative information on economic topics may safely be left by Mr. Wells to an intelligent public. It is rather significant that no list is given of the works to which Professor Patten alludes. Are we to understand that these unnamed modern authorities sustain the conception that prices are affected by paper money, meaning by that term paper convertible into coin? Nobody will question the fact that inconvertible paper does affect prices quotable in such paper. That Professor Patten meant convertible paper, or at all events meant to *include* convertible paper, becomes evident by his criticism of Mr. Wells' page 222, as we shall see farther on. I do not pretend that I have read everything that has been written on the subject of money, but what I have read and the reflection I have been able to give to the subject lead me to the conclusion that paper money convertible into gold has no effect at all upon prices, although prices, which are a reflex of the course of trade, do have a very considerable effect on the quantity of paper money afloat. I think that this is the opinion of the majority

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of economists to-day.[1] In other words, it is the march and course of trade that, within limits fixed by the quantity of metallic money (and very elastic limits these are), makes prices high or low and determines whether there shall be much or little paper money afloat. Mill's statement that bank notes, bills or checks, as such, do not act on prices at all, but that credit in whatever shape given, whether it gives rise to any transferable instruments capable of passing into circulation or not, does so act, is true. Reference might be made to Tooke, *passim.* At the conclusion of his examination of the high and low prices in Great Britain between 1793 and 1837, he says:

> There is not, as far as I have been able to discover, any single commodity in the whole range of articles embraced in the most extensive list of prices, the variations of which do not admit of being distinctly accounted for by circumstances peculiar to it in the relation of supply, actual or contingent, real or apprehended, to the ordinary rate of consumption, without supposing any influence from the Bank restriction beyond the degree in which the difference of exchange [premium on gold] which could not have existed but for the restriction, may be considered to have operated distinctly on the cost of production.[2]

Nevertheless the variations in the amount of the Bank's circulation during this period ranged from £9,246,790 in 1796 to £29,543,780 in 1817. James Wilson, one of the strongest opponents of the doctrine that convertible paper money affects prices, makes a concession which I quote in order not to omit anything which may be deemed important, *viz.:*

> To whatever extent the issue of paper money released gold from the currency, to that extent there would be an increased supply of that commodity on the general markets of the world and its value would be correspondingly diminished as much as if a similar additional supply had been received from the mines; and to this extent would the substitution of a paper for a gold currency increase prices generally in *all* countries, while in each country they would remain *relatively* the same.[3]

May not the same remark be made concerning clearing houses and other modern contrivances: To whatever extent clearing houses release gold from the currency, *etc.;* to what-

[1] See F. A. Walker, Political Economy, p. 180. [2] Vol. ii, p. 349.
[3] Capital, Currency and Banking (London, 1847), page 82.

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ever extent ocean telegraph cables release gold, *etc.?* True, clearing houses and ocean cables are not currency, but they "release gold" to an enormous extent, and it is the releasing, not the currency function, that is here in question.

In his next succeeding paragraph Professor Patten says:

> He [Wells] brings forth a table (page 222) to show that prices are not determined by the quantity of money, just as if the author of the laws of money was a mere theorist ignorant of commercial facts. While there has been an abundance of fault found with Ricardo's knowledge of industrial relations, no one has dared to question his thorough familiarity with money matters.

Mr. Wells on page 222 presents a table showing the increase of the circulating medium in the United States in a period of ten years, 1879 to 1889. The increase was upwards of $600,000,000, or more than 60 per cent, being more than double the rate of increase of the population. Since this was a period of declining prices of most articles of commerce, he offers the state of facts to those who hold that the volume of the circulating medium controls prices, as a nut to be cracked. It would be more to the purpose for Professor Patten to crack it than to cite in this vague way "the author of the laws of money." In what convention, by the way, was Ricardo nominated as the author of those laws? Chevalier assigns part of the honors to Aristotle. I suppose that all that Mr. Wells intended by his table on page 222 was to emphasize his general contention that new supplies of commodities, due to new inventions, new means of transportation, *etc.*, are potent to reduce the prices of those things in the face of conditions which tend ordinarily to increase them. At all events, that is all that I make out of it.

It is regarded by Professor Patten as a glaring defect in Mr. Wells' point of view that he does not desire any reduction in the price of silver, whereas the critic thinks that the American people as a whole "are deeply interested in a low price for silver." Here is a direct conflict of opinion as to the interests of the country respecting a matter of much public agitation and concern. Mr. Wells' view is that a high price of silver is for

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the interest of the country because the country is "a large producer and seller of silver." That seems to be very simple and cognizable. It is like saying that if a man produces more of a given article than he consumes, it is for his interest that the article should command a high price. Every man's instinct assents to that, and the instinct is not a misleading one. What is the argument on the other side? Why, that with silver at a low price the people would be able to have more silverware on their tables. Moreover "its clear metallic tone makes its use for musical instruments very desirable." Here are silver spoons and trombones set over against whatever we should be able to buy from foreigners with our exported silver. The higher the price of silver, the more tea, coffee and sugar; the lower the price, the more silver tea-pots, coffee-pots and trombones. Now I do not undervalue a good trombone or other wind instrument in the hands of a competent performer, but I have been taught to use plated ware in preference to silver as furnishing less temptation to burglars; and if I had my choice at this moment between a silver coffee-pot and a plated one for household use I should choose the latter.

Passing over a paragraph concerning butter and oleomargarine, which I have read several times without seeing any point in it as a criticism on Mr. Wells, we come to a pretty wide question, namely, the influence of labor-saving machinery upon wages. Mr. Wells' idea coincides, as a matter of observation, with that of Bastiat, that wages increase with the abundance of commodities consequent upon improved machinery. By wages is meant the material well-being of the wage-worker. Bastiat's so-called law is well known and need not be here quoted. Mr. Wells says "perhaps" it is a law, but he prefers to call it a result, which is certainly safer, since there is nothing in the nature of things to give it the character of a law. Professor Patten objects that "the whole problem of rent and the influence that it has on the distribution of wealth are overlooked." Moreover

> he [Wells] assumes that wages are fixed by the average return for labor and not by the least productive labor. According to well-established economic doctrine, wages and interest are determined by the

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margin of cultivation, that is, the poorest land of which the community makes use. Any advantage possessed by laborers on better land is taken from them as rent.

If Professor Patten has found *any* "well-established" doctrine respecting wages he is to be congratulated, for I think that no other professor of political economy can say as much. Doubtless all have some doctrine established in their own minds, but that is not what is meant when we speak of a doctrine as well established. We mean by this a doctrine concurred in by such a decided preponderance of writers that any dissent from it is looked upon as an eccentricity. There is not at the present time any such general consensus of opinion respecting the determining cause or causes of the rate of wages.[1] But we are told here that "wages *and interest*" are determined by the margin of cultivation. The only writer I am acquainted with who holds this view is Mr. Henry George, who says in *Progress and Poverty*, page 183:

> The relation between wages and interest is determined by the average power of increase which attaches to capital from its use in reproductive modes. As rent arises, interest will fall as wages fall or will be determined by the margin of cultivation.

In the view of Ricardo wages and profits are the antitheses of each other, the one rising as the other falls, and interest is ultimately and permanently governed by the rate of profit; from which it would result that if wages follow the margin of cultivation, interest does not. I do not wish to be understood here as "quoting approvingly," but merely as citing Ricardo against Patten and George. But what connection, in any way, has the margin of cultivation with *Recent Economic Changes?* How are wages in New England determined by the margin of cultivation when there is practically no such margin there? Ah, but there is a margin in some other place, with which New England has commercial relations. Yes. But it is, and has been, for some time back, probably for the whole time covered

[1] See on this point the writings of Thornton, Mill, Cairnes, Jevons, Leroy-Beaulieu, F. A. Walker and Sumner. Professor Sumner, whose essay I consider the best of the series, begins it by showing the chaotic state of opinion on the subject.

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by Mr. Wells' investigations, a diminishing and not an increasing quantity. Mr. Wells was careful to say (page 395) that his review was confined to the present time and did not look forward to the occupation and tillage of all the land on the earth's surface, or to the exhaustion of the coal supply. It would be quite as appropriate for Professor Patten to say that Mr. Wells has wholly overlooked the growing cost of coal in Great Britain due to the increasing depth of mines.

A considerable space is given to sarcastic comment on Mr. Wells' terminology, his use of the words "all-sufficient," "all-pervasive," *etc.* The force of this criticism depends on whether or not the terms were rightly used in the particular cases. If the construction of a railroad from a town to a coal mine has demonstrably reduced the cost of carrying coal that distance by one dollar per ton, and if we find coal actually selling in the town at a dollar a ton less than before, we are justified in saying that the construction of the railroad is an all-sufficient reason for the reduced price, even though there may have been some little improvements made at the same time in the methods of mining coal. The law does not concern itself with trifles, nor shall I concern myself further with this one.

We have seen what warrant there is for Professor Patten's calm assumption of superiority over Mr. Wells in logical method. We shall now see whether he is any happier in dealing with facts.

Nearly four pages are taken up with the growth of the beet sugar industry in Germany, and its effects upon Germany, upon other sugar-producing countries and upon the world in general. At the bottom of all is the assumption that this growth has been largely due to the bounties on exportation paid by the German government.

> In the contest between the cane sugar of the South and the beet sugar of the North [says Professor Patten] climate was on the side of the South while intelligence and capital were on the side of the North. Intelligence showed itself a more important factor than climate, and the price of sugar produced in Germany has now been reduced much below what it could have been while the whole supply of the world was

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obtained from the half-civilized semi-tropical regions. This reduction of the price of sugar was greatly stimulated by the bounties paid by the German government for the exportation of sugar. These made the profits of sugar production so great that the industry was developed throughout Germany in many new places for which it was specially suited. It is not likely that fifty years of production without a bounty would have done so much for cheapening the price of sugar as the bounty-paying policy has done in the last ten years.

If this is not true, everything in Professor Patten's treatment of the subject falls to the ground.

I shall cite two authorities in addition to the narrative in Mr. Wells' book. One of these is the *Encyclopædia Britannica*, article Sugar, page 626, by Dittmar and Paton. The other is Schoenberg's *Handbuch der politischen Oekonomie*, 2d edition, III, 432–434; *Zölle und Rübenzuckersteuer*, by Riecke. And first the encyclopædia:

The efforts of growers [of beets] have been largely directed to the development of roots yielding juice rich in sugar; and especially in Germany these efforts have been stimulated by the circumstance that the *excise duty* on inland sugar is there calculated on the roots. The duty is based on the assumption that from $12\frac{1}{2}$ parts of beet 1 part of grain sugar is obtained; but in actual practice 1 part of raw sugar is now yielded by 9.27 parts of root. Moreover, when the sugar is exported a drawback is paid for that on which no duty was actually levied, and hence indirectly comes the so-called bounty on German sugar. In 1836, for 1 part of sugar 18 parts of beets were used; in 1850 13.8 parts; in 1860 12.7 parts, and now [1887] 9.25 parts only are required.

Observe that the article in the encyclopædia says that the growers were stimulated by *the form of the tax* to produce a beet which should be rich in sugar.[1] That is, they wanted to get rid of the tax as much as possible. Similarly Mr. Wells says (page 296):

For a number of years after 1869 this arrangement worked well, the drawback being about equivalent to and no more than the tax. But nothing stimulates human ingenuity in a greater degree than the prospect of gain through the avoidance of a tax; and gradually a change in the condition of affairs took place, *etc.*

[1] In the same way Riecke says the technical improvements were made under the stimulus of the tax (unter dem Sporn der Rübensteuer). p. 432.

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Riecke says that the internal excise tax on the beets in 1841 was 15 pfennigs per centner,[1] gradually increased to 30, 60, 75 and finally (1861) to 80 pfennigs, the latter sum being about 20 cents of our money. The same authority tells us that in the year 1844, 20 centners of beets yielded 1 centner of sugar; in 1869, the ratio was 12½ to 1; in 1878, 10¾ to 1. Mr. Wells says that in 1889 the ratio was 8.80 to 1.[2] Riecke also gives us the prices of refined sugar per centner in Berlin and Magdeburg from 1822 to 1884 thus: 1822, 34 thalers (102 marks); 1853, 17⅕ thalers (51⅗ marks); 1871, 37 to 45 marks according to quality; 1878, 29 to 36 marks; 1884, 25 to 32 marks.

The tax-drawback became a bounty on exportation about 1872. Between 1844 and 1869 (25 years), the Germans improved the plant from the ratio 1 of sugar to 20 of beet, up to 1 to 12½; from 1869 to 1878, to 10¾; and since the last-named period to 8½. Does it teach us anything about the influence of the export bounty to know that an improvement that had been going on steadily for forty years did not stop when the internal tax, unexpectedly and undesignedly, became a bounty on exportation? Of course when the export bounty became considerable there was a deal of exporting. If Professor Patten means by "the cheapening of the price of sugar" the cheapening in the London market, he is quite right. There is no mystery about that. John Bull has a sweet tooth. He can be hired to eat sugar on easy terms. But if Professor Patten means that the export bounty has caused any improvement in the methods of culture or treatment that would not otherwise have taken place, there is not only no evidence to show it, but no reason whatever for believing it. And what about the price of sugar in Germany that Professor Patten says has probably been cheapened more in the last ten years than it would have been in fifty years without the bounty? In the ten years ending in 1884, during all of which a bounty was paid, the price was

[1] The centner is the *Zoll-zentner* (or customs hundredweight), not the metric centner.

[2] Professor Gustave Cohn says that the ratio has fallen to 8½ to 1. System der Finanzwissenschaft (1889), p. 581.

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reduced not more than twelve marks per centner. In the fifty years, 1822–1872, it was reduced more than sixty marks. It is true that there has been, all this time, an import duty on sugar in Germany, which has operated as protection to both the beet-grower and the refiner in the home market. The point I make is that Professor Patten is all at sea as to the particular facts upon which his criticism of Mr. Wells rests.

The Professor thinks, moreover, that

> Mr. Wells is also greatly mistaken in his supposition that the taking off of the bounties on the part of European nations would cause the production of beet sugar to become unprofitable and compel a return to the natural production of Southern regions.

Mr. Wells has not indulged any such "supposition," or if he has, he has kept it to himself. What he said was:

> The great difficulty of the situation, however, is that *much* of the sugar industry that has been called into existence artificially would be immediately ruined, with great loss and suffering to a large number of people, if the bounties were at once discontinued.

This is true. It has been proved true in Russia. It is not necessary to explain how. Nor is it necessary to point out the difference between what Mr. Wells said and what is attributed to him.

In Mr. Wells' appendix on iron and steel, he showed, on the authority of a pamphlet issued in 1888 by Mr. James M. Swank, that the average price of Scotch pig iron in Glasgow for the ten years 1878–1887, inclusive, had been $12.94 per ton, and that the average price of anthracite foundry iron in Philadelphia during the same period had been $21.87 per ton. The difference is $8.93 per ton. The difference in price is accounted for by freight charges about $2 and duty $7 per ton. Multiplying the number of tons of pig iron consumed in this country during the period by seven, he said, would show "the relative price or cost of iron and steel to the consumers of these metals in the United States as compared with those of Great Britain and other countries." (Page 471.) Is not that a fair statement and a true statement? It seems to me as true as any proposition in Euclid. The whole drift, scope and purport of the appendix was to show

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that this disparity of cost had disabled the United States from competing with Europeans in supplying the vast populations described as the "non-machine-using countries of the world" with iron and with the things of which iron is the basis and condition of cheap production. There are twelve pages in the appendix and there are thirteen distinct and separate statements that it is the *comparative cost* of iron and steel between the two countries that is under review, — an average of rather more than one such explanation to each page. We quote the last paragraph in full:

> The American people are thus subjected to a very heavy and continuous loss. Their power of controlling their home markets is impaired; they lose the advantage of their position and of their opportunity to supply the vast non-machine-using countries of the world, containing over a thousand million population, with goods and wares made at high wages and low cost, for the reason that, in consequence of a disparity in the price of the material which lies at the foundation of all arts, they have, by their own act, given supremacy to Great Britain in the lower cost of her investments for meeting this demand.

The appendix next tells us that, if all the duty on iron and steel were removed to-morrow, the prices in England would rise to our level, nobody in this country would be hurt, and the conditions for our sharing in the supply of the non-machine-using nations with iron and other manufactures would be equalized with those of Great Britain. Various reasons are given for this belief. They need not be specified here, but it is worth noting that the condition predicted has already come to pass, partly as the result of causes shown by Mr. Wells to be then working. Pig iron and steel rails are selling in England as high as in this country. The cost of making them is as high. The *Iron World* of Pittsburg (March 7) figures the cost of making Bessemer pig $1.87 higher in England than here.

Now what objection does the critic raise to this?

> It is now too late [he says] to expect that the American people will ever consent to the destruction of their leading industries [*sic*], and hence it devolves upon the advocates of free trade to show that American production would not be reduced if the tariff were taken off. On the one hand they must prove that the tariff is added to the price

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paid by consumers, and on the other hand that production in America would not be less without a tariff. These two fallacies are both plausible and when used with skill are quite effective, but it will not do to bring them into too close connection.

The occasion for this sarcasm is found by ignoring the main body of the argument in the appendix and selecting one or two paragraphs in which the statement is made, perhaps too broadly if taken alone, that the cost of pig iron is absolutely enhanced by the tariff seven dollars per ton to the American consumer; whereas, the purpose of the appendix was to show that, looking at comparative cost in the two countries as competitors in the world's markets, the price was by reason of the tariff seven dollars to the disadvantage of Americans. Here, if anywhere, and in the manner indicated, Professor Patten has made a point; but I cannot consider it anything to be proud of.

My attention is arrested by the phrase: "It is now too late to expect that the American people will ever consent to the destruction of their leading industries," and I think that it is fair to ask a stickler for precision of thought and language in economic discussion a few questions thereunder. What is a leading industry? What is it to consent to the destruction of a leading industry? In my younger days canal boating was a leading industry. Did the American people consent to its destruction or not? It would seem that that portion of them residing in the state of Pennsylvania consented to it without the least hesitation, indeed contributed much to hasten it. The shelling of corn on shovels, as Mr. Wells says and as I remember, was once a leading industry. The American people consented to the destruction of that. The chopping and hauling of cord wood was once a leading industry and logging is such now; but the former is already destroyed in many parts of the country and the latter is going the same way, with the consent of the people, too, as far as I can discover. Retail trade has always been a leading industry; yet Professor Patten thinks that the number of retail traders ought to be greatly curtailed, and he favors the use of the taxing power to that end. His argument shows that if this industry could be destroyed, he at

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least would consent to the destruction.[1] If Professor Patten, instead of using catchwords, had said that the American people would never consent to such a reduction of the tariff as would cause the abandonment of iron-making, for instance, that would have been an intelligible statement and would have opened for discussion a variety of interesting questions, and chiefly the very ones treated in Mr. Wells' appendix, *viz.:* Will tariff reduction cause the abandonment of iron-making? Will tariff reduction cause the abandonment of wool-growing, salt-making, copper-mining, *etc., etc.?* To say, instead, that the people will never consent to the destruction of leading industries is to make an assertion which, if it means anything at all, is not true; for they have already consented to the destruction of several and have even rejoiced to see them go.

I have aimed to examine *seriatim* all the specific objections that Professor Patten has raised to Mr. Wells' book. Economists will judge whether those objections are well founded or not.

HORACE WHITE.

[1] The Principles of Rational Taxation, by Simon N. Patten.

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REVIEWS.

Travels in France during the Years 1787, 1788, 1789. By ARTHUR YOUNG. With an introduction, a biographical sketch, and notes, by M. Betham-Edwards. London, George Bell and Sons, 1889. Bohn's Standard Library. — lix, 366 pp.

It was a happy thought to celebrate the centennial of the Revolution with a reissue of Arthur Young's classic *Travels* which have been so long out of print. Equally happy was the selection of Miss Betham-Edwards as editor. Her rare familiarity with almost every part of modern France, her enthusiasm for her author and her own vivacious style have enabled her to present Arthur Young to the modern reader in a most attractive manner. The introduction is a succinct comparison of the France which Arthur Young knew with the France of to-day. It is so suggestive and valuable that one wishes it were longer. The sketch of Young's life is done with a skilful and sympathetic hand. His life was one of strange contrasts. Hopelessly unsuccessful as a farmer, he was one of the greatest of writers on agriculture. His work on France, it is hardly necessary to say, stands in the very front rank in the department of economic geography and holds a unique place among authorities on the history of the Revolution. His family life involved unusual extremes of joy and sorrow, and he spent a blind old age as an eloquent popular preacher.

One oversight on the part of the editor should be remedied in a second edition. We are nowhere told that this volume is not a complete edition of Young's *Travels*. It is in fact merely the *Travels* proper, with the essay on the Revolution. The complete work includes, in addition, a very valuable series of essays on the industrial condition and economic geography of France. In them are to be found thoroughly scientific accounts of the state of agriculture, commerce, manufactures, taxation and wages, with full statistical tables, as well as a description of the geographical distribution of the different products. On one of his journeys Young went into Northern Italy and Spain, and he records his impressions in his journal and discusses the facts in short essays. All this, which comprises more than one-third of the original work, is omitted from this new edition, and properly enough, as this is a popular reprint for the general reader; but the fact should have been stated in the preface. The complete edition, first published in two stately quartos in 1794, is now generally most accessible in Pinkerton's *Collection of*

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Voyages and Travels. A French translation, edited and annotated by Lavergne, has hitherto been the most convenient form of the *Travels* for persons of moderate means.

Miss Betham-Edwards, in a note on a list of feudal rights, gives a reference to Henri Martin "on the horrible privilege of *la marquette*." She does not seem to be aware that this favorite horror of sensational writers on the middle ages seems surely destined to follow Pope Joan into the limbo of exploded myths. Every one who reads Karl Schmidt's learned and exhaustive treatise on the *Jus Primae Noctis* will admit that at least this alleged feudal right is a very perilous subject to dogmatize upon. He has certainly proved that the right was never a striking characteristic of the feudal system in any place. Most of the so-called evidence is of a very evanescent nature and collapses promptly under critical examination. Schmidt concludes that the belief in such a right is "ein gelehrter Aberglaube" dating from about 1500. Such alleged documentary evidence as has been advanced has a decided ætiological color, and the entire absence of allusion to the right in the French *Faibliaux* is most significant. Schultz, the author of *Das höfische Leben zur Zeit der Minnesinger*, found no traces of the right in the sources utilized for that work. There is nothing on the subject in the canon law, the papal decretals or the proceedings of church councils. The *argumentum e silentio* in these cases is so strong as to require the best kind of evidence for rebuttal. In the absence of that, the mere enumeration of the names of great scholars who have believed in it has comparatively little value.

EDWARD G. BOURNE.

The Industrial Transition in Japan. By YEIJIRO ONO, Ph.D. Publications of the American Economic Association, Vol. V, No. 1. 1890. — 121 pp.

There is perhaps no other country in the world to-day so interesting to the economist from the scientific standpoint as is Japan. The remarkable efforts made within the last few years by her people — a people that in western countries had been considered not more than semi-civilized — to throw off the shackles that bound them to the past, and to take their place among the highly civilized nations of the earth, have awakened the interest and hearty sympathy of the world. In consequence, every contribution that will help one to understand the real condition of affairs in Japan will be eagerly read; and this really admirable monograph on the present industrial transition in that country is warmly to be welcomed.

After a very brief historical introduction to make what follows readily understood, the author gives an account of the present industrial status,

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discussing especially the distribution and density of the population, and the conditions of agriculture and of manufactures. Primitive methods in agriculture and manufacturing are what one expects; but many persons will be surprised to read of the wide extent of territory that is yet to be brought under cultivation, and of the consequent opportunity for a very wide extension as well as improvement in agriculture. The present backward condition of affairs — brought about mainly, the author thinks, by the misgovernment of the country under the feudal régime — might well have served, had the author been of the *laissez-faire* school, to "point a moral"; but in his opinion the government in its present form may well be active in helping to right the wrongs of the past. To be sure, the chief duty of the state is to free the people from their feudal bondage — a task which, however fully accomplished in the political sense, is yet far from completion so far as industrial conditions are concerned. But in the author's opinion there is also much for the state to do in the way of positive legislation. The present unfavorable distribution of the population, the grievous burden of the land tax, the decay of cities, even the primitive methods of labor and of living are all part of the feudal inheritance, and these defects cannot be healed without the direct aid of the state.

The second part of the monograph, in which the author considers the steps necessary to complete the industrial transition, shows sound knowledge and (what is better) a candid coolness of judgment, a judicial temper. His summary of the needs of Japan is in these words: "The final goal at which Japan ought to aim is to establish manufactures and to increase the efficiency of her national energy by the aid of science and of art." This opens up the well-worn but by no means worn-out question of protective tariffs. Protectionists of late years have been holding up Japan as a terrible example of the effects of free trade, and have been denouncing England and her system as the cause of the bad industrial conditions in Japan. The monograph recognizes the injury done by the treaties which prevent the securing of a revenue from higher import duties, yet it does not advocate a protective tariff. The author thinks that a protective tariff could not effect the desired diversification of industries; but he displays none of the polemic spirit which commonly accompanies a discussion of protection *versus* free trade. He confines himself to a careful analysis of the present conditions of the country, and a discussion of the measures which in his judgment these conditions require. The means by which the industrial transition is to be successfully completed may be summarized in these words: better means of communication, a better system of land tenure, better training for the working people, improvements in methods of taxation and the diversification of industry that will come from these.

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In the concluding pages the author discusses the probable social consequences of the industrial transition. He fully recognizes the difficulty of the transition, the suffering that must come, especially in the case of unskilled laborers; but he has confidence that the people will respond quickly to their new interests, and will soon learn to adapt themselves to their new environment. It is perhaps natural that he should take a more hopeful view of the situation than do many foreigners. Some Americans long resident in Japan think that the transition to the new circumstances will not be readily made, that the changes now encouraged by the government are coming much too rapidly, and that there must inevitably be a disastrous reaction. The world will hope that the author's optimistic opinions may prove to be well founded.

One may suggest to the author that few American readers are well versed in the geography of Japan. It would have been more convenient for some of them, if his map had contained the names of all the chief places mentioned in the text. So, too, the American equivalents of Japanese money might have been mentioned in a note. It is not yet considered a disgrace for even an educated American not to keep these facts in mind; and for such as do not, these helps would have been welcome. Still, such trivial faults are worth but a passing note. The monograph is one that will be read with interest and profit, and it should have a sale outside the usual range of the publications of the Economic Association.

JEREMIAH W. JENKS.

The Industrial Progress of the Nation: Consumption limited, Production unlimited. By EDWARD ATKINSON, LL.D., Ph.D. New York and London, G. P. Putnam's Sons, 1890. — 8vo, 395 pp.

This volume contains Mr. Atkinson's recent contributions to the *Forum* and the *Century* magazines on economic topics, together with a few essays and addresses from other sources. They vary in character from the Commencement address at the University of South Carolina on the broad and startling economic theory of "Consumption limited, Production unlimited" to the description of the "Aladdin Cooker"; and from "Slow-Burning Construction" (how to build cotton-mills) to the final essay on "Religion and Life." They are full of statistical data and disfigured (as it seems to me) by the numerous diagrams of horizontal, heavy, black lines, the constant use of which is one of the weaknesses of the amiable author. When a diagram, intended to make a comparison graphically vivid, can be understood only by reference to the accompanying figures, I submit that its usefulness is not apparent. I defy any one, however, to distinguish with the naked eye the difference between the lines (on page 105) representing the cost of standard por-

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tions of clothing in 1870 and in 1880, although the figures show that there was an actual fall of nearly twenty per cent.

It is difficult to formulate an altogether fair and scientific judgment of Mr. Atkinson's contribution to economic science. No one can deny that his essays display a knowledge of practical affairs, an acuteness and an originality that are often immensely suggestive. To answer the attacks on the railroads by showing that the cost of moving freight has been diminished in twenty years from 3.45 cents to .68 cents per ton mile, and that the bread and meat necessary for a year's consumption can now be moved a thousand miles for one day's wages of an ordinary mechanic, is certainly an effective way of illustrating the benefits of private competition. To show that even in such a city as Boston, where land-values are high, a single tax would demand more than the entire income from land, is a very practical way of illustrating the exaggerations of Henry George. So also the inquiry: Why, if co-operation is a good thing, don't people co-operate? — there being no legal hindrance to it — and the general demand that social reformers shall present their plans in the shape of a legislative bill so that we may judge whether they are practical or not, are very pertinent. The "glass of beer a day" which communistic division of property might secure for us, and the unprotected "hen industry," are familiar to all readers. In short, in the isolated essay Mr. Atkinson combines a practical knowledge and a power of "putting things" that is deservedly popular and should be especially instructive to the professional student and the teacher.

Why, then, is this favorable impression not heightened, but diminished by the collection of the essays into a volume? One reason is, perhaps, that the author is not self-contained enough; that the very abundance of illustrations and ideas that he throws together wearies and confuses the reader. This is inevitable when a large number of popular papers are reprinted without excision and pruning. But the real reason seems to me to be this: the book leaves the impression that Mr. Atkinson is too overwhelmingly optimistic in his view of present society to be fully trusted in his generalizations. It may be true that the working men and women "are steadily securing to their own use and enjoyment an increasing share of an increasing product." It may also be true that the millionnaire enjoys but a tithe of the wealth that he adds to the community and is thus a cheap man for the community to employ. But it is a long step even from these important propositions to the unproven assertion that "consumption is limited while production is unlimited," and that "the Lord maketh the selfishness of man to work for the material welfare of his kind." In the same way the repetition of the favorite couplet,

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Of what avail the plough and sail,
Or land, or life, if freedom fail?

seems to indicate prepossessions that may have controlled the author's conclusions and based them on sentiment as well as on economic fact. All this does not affect the value of what Mr. Atkinson gives from the wealth of his own business knowledge and experience, or the acuteness of his judgment in regard to various schemes for social reform; but it will make us cautious in accepting all his generalizations. It would have been better, perhaps, to have frankly labelled the book: Contributions to the theory that this is the best of all possible worlds — with the addition of the Aladdin Cooker.

R. M. S.

L'Impôt. Leçons données aux cours publics de la ville de Bruxelles. Par H. DENIS, Professeur à l'Université. Première Série. Bruxelles, Veuve Monnom, 1889. — 8vo, xiii, 309 pp. — [Accompagné d'un] *Atlas de Statistique comparée.* — Large folio, 25 plates.

Since the volume of McCulloch, published in 1853, no work has appeared in English on the principles of taxation. English and American readers have been compelled to depend on German and French treatises; and, from greater familiarity with the language, more commonly on the latter. But it has been an unfortunate habit of most French writers on finance to discuss their topics in happy disregard of the newest thought in other countries. It thus happens that even their most approved works on taxation give the reader only the French view, not the scientific or comparative view. This reproach to French literature has now been removed by the admirable work of Professor Denis, who is, however, not a Frenchman, but a Belgian.

Professor Denis made his reputation as an authority on finance nine years ago with the valuable report to the city council of Brussels on the income tax, afterwards reprinted as a bulky volume. Since that time he has been giving courses of lectures on finance, which are now published in book form. The present volume gives us the ground covered in 1886–87; a succeeding volume will continue the subject so as to cover the whole field of taxation.

The fact that these are simply published lectures contributes greatly to the value as well as somewhat to the shortcomings of the book. The style is simple and clear, the arrangement is logical and sharply defined. But on the other hand the lecture form has made it impracticable to give authorities for the facts and opinions quoted, other than a short bibliography at the close of each chapter. Furthermore, the details of the argument have not been pursued with such care as would perhaps be demanded in a work constructed on other principles.

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Many of the finer points in the science of finance, including some that are of permanent practical importance in America, do not receive any attention at all. The history and facts of taxation, again, are given only in a very fragmentary way. With all these qualifications, however, the book of M. Denis, so far as we can judge from the present instalment, may be declared one of the most valuable works on taxation hitherto published. Its chief claim to recognition is not so much the views of the author, as the calm and unbiased consideration of the doctrines of all his predecessors. The fundamental vice of so many writers is the assumption that the views expressed by them are new. Ignorance of economic and financial literature is scarcely less common than ignorance of economic and financial facts. It is refreshing to find in the present work a complete history of the science, as well as a method which the author himself characterizes as "instructive, historical, and above all statistical."

Professor Denis considers the science of finance as a subordinate division of sociology, and as distinct from political economy although having many points in connection with it. He attempts to lay down the law of their relation. He distinguishes between domains, fees (*la taxe*) and taxes, and then devotes the greater part of the book to a discussion of the problems of justice in taxation and to a consideration of the various direct taxes. I shall not endeavor to criticize his views in detail here, as there will be occasion to attempt this on a larger scale in another place. It will be sufficient to say that in many of the important questions, such as proportion *versus* progression, minimum of existence, incidence and diffusion, *etc.*, readers who have been confined to French and English works will find a wealth of new ideas and a mass of interesting facts. Of course no work written by a European, or at all events by a continental, scholar can be expected to treat primarily of those questions which most interest and affect Americans. But if there is any science at all in finance, such works as this must be deemed of the greatest importance to Americans and Europeans alike. Many minor mistakes might be noted; as *e.g.* on page 301, where the idea of the Italian classification of incomes in the income tax is ascribed to a German source. In reality the idea can be dated back to the beginning of the century in England, and it has received consideration in parliamentary reports and scientific essays for many decades. But such smaller points must be overlooked in a consideration of the general tone and value of the book. The usefulness of the work is greatly increased by the accompanying volume of graphic tables, which give in small compass what would require many words to explain.

EDWIN R. A. SELIGMAN.

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Nouveau Dictionnaire d'Économie Politique. Publié sous la direction de M. Léon Say et de M. Joseph Chailley. Livraisons 1–3. Paris, Guillaumin, 1890. — Large 8vo, 384 pp.

Dictionnaire des Finances. Publié sous la direction de M. Léon Say, par MM. Louis Foyot et A. Lanjalley. Vol. I. Paris, Berger, Levrault & C^ie^, 1883–9. — Large 8vo, 1562 pp.

L'Économie Sociale. Revue mensuelle publiée sous la direction de MM. Félix Martin, Émile Cacheux, Georges Hamon et Tarbouriech. Paris, Marchal et Bellard, 1890. — 8vo.

Bulletin de la Société Française des Habitations à Bon Marché. Première année. No. 1. Paris, 1890. — 8vo, 88 pp.

This is the age of vast undertakings. Within the last few months no less than three comprehensive cyclopædias in various domains of political economy have been begun in Germany, and one has been announced in England. Now France, not to be outdone, enters the field.

The *Nouveau Dictionnaire d'Économie Politique* is not a new edition of the dictionary edited by Coquelin and Guillaumin almost twenty years ago. It is a completely new work. But it is constructed on very much the same lines, and many of the topics are identical. In the three instalments which have already appeared, we search in vain for any of the adherents of the newer school, represented by the *Revue d'Économie Politique*. We may therefore conclude that the dictionary will be edited on very much the same principles as its predecessor. It is a distinctly French work, intended for French readers. The bibliography even in important articles is confined almost exclusively to French works. The few exceptions, as in the articles by Raffalovich and Bernard, only serve to emphasize the rule. But the essays are characterized throughout by clearness and precision of both thought and language. The promise held out in the introductory circular that a large part of the articles would be devoted to social topics seems to be fairly well kept. Three important subjects are treated in the very first instalment: *Assistance* by Chevallier, *Association* by Hubert Valleroux and *Assurance* by Lacombe. It is surprising to find in the second of these essays so important a work as that of Gierke, *Das Genossenschaftswesen*, entirely overlooked. The work is to be completed in two volumes, of about eighteen instalments, and will of course be valuable to those who desire to keep abreast of French development.

In the *Dictionnaire des Finances*, of which the first volume has just been completed, we have a work of considerably narrower scope. The science of administration has been more nearly perfected in France than elsewhere. Financial administration, in particular, has been

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thoroughly studied. As every dictionary of finance must necessarily devote a large proportion of its space to the purely administrative features, a French work possesses many initial advantages. Theory, as we should expect, receives but scant attention. The main stress is laid on a critical presentation of the workings of financial institutions, mainly of France itself. And the articles are for the most part written not by economists widely known outside of France, but by writers whom the title-page describes as "*les principaux fonctionnaires des administrations publiques.*" Some of the articles form veritable treatises in themselves. Such are, *e.g.*, the essay on Banks by Clement Juglar (68 double-column pages), on Budgets by P. Boiteau (220 pages), and on Railroads by Octave Noel (96 pages). But many of the smaller articles, also, are thoroughly well done and give a complete picture of the development and actual condition of French institutions. The student of comparative finance will find the work indispensable. There is one more volume to come.

Among the various associations that met at the Paris exposition one of the most successful was that known as the Congress of Social Economics. As a result of the interest awakened in the questions here considered it was decided to found a monthly journal, devoted entirely to their discussion. *L'Économie Sociale*, as the periodical is called, covers a wide but interesting field, which may be described in short as the relations of laborers to their employers and to each other. Among the chief topics to be studied are accidents, insurance, popular banks, dwellings, sanitary conditions, factory laws, trades unions and labor associations, co-operation and profit-sharing and in short all institutions which tend to improve the condition of the working classes. The scope seems to be very similar to that of the *Arbeiterfreund* in Germany. It is a sign of the times, all the more cheering because the attitude of the old orthodox school has been mainly such as to render the contest between *laissez faire* and socialism sharper in France than anywhere else. The founders of the new review, chiefly statesmen and professors in the law schools, give us their confession of faith in the introductory essay. Two theories of government confront each other, they say, *l'État providence* and *l'État gendarme;* or, as we should put it, the paternal and the police state, socialism and do-nothing-ism. Both these extremes they discard. They declare themselves partisans of individual liberty, and object to the Prussian state socialism; but they maintain that government must interfere wherever private initiative has shown itself incapable of achieving satisfactory results. The social interests are the important ones.

Another outcome of the Paris exposition of social economics was the Congress of Model Dwellings which decided to start a periodical de-

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voted solely to its particular interests. The *Bulletin de la Société des Habitations à Bon Marché* proposes to act as the mouthpiece of the reform movements which look to the erection of model tenements and improved dwellings for the working classes. The society is ready to send to any person plans, statutes, models and all other documents or information which may be of use. And while the society itself expects to find its chief field for work in France, the *Bulletin* is to serve as an international medium of communication. The first number of this journal contains among other things a review of the formation of the society, by its president, M. Jules Siegfried, two interesting essays by Jules Simon and Georges Picot on the moral and economic aspect of the question, and a full account of the *cité ouvrière* in Havre. The bulletin will be a welcome addition to the rather scanty periodical literature on the subject.

All over Europe it is fast being recognized that the labor question is the social question *par excellence*. The starting of the *Archiv für soziale Gesetzgebung*, the foundation of *L'Économie Sociale*, and above all the recent rescripts of the German Emperor are pushing the social questions to the forefront. And yet we in the United States are still debating the old, old commercial question. When will people realize that free trade or protection is a matter of very small consequence compared with the momentous problems of the social question? When shall we cease to dissipate our energy in battling about matters of dollars and cents, and turn our efforts to the struggle for manhood and true civilization?

EDWIN R. A. SELIGMAN.

La Population Française: Histoire de la Population avant 1789 et Démographie de la France comparée a celle des autres nations au XIX^e^ siècle, précédée d'une Introduction sur la Statistique. Par E. LEVASSEUR. Tome I. Paris, Arthur Rousseau, 1889. — Large octavo, 468 pp.

The distinguished French statistician has combined in this book the results of his profound researches in history and his thorough knowledge of statistics. It may fairly be said to be exhaustive of the subject, and it will at once occupy the position of the authoritative work on the population of France. It differs from similar works for other countries, in being not a mere compilation or handbook of statistics, but a complete body of demographical facts, illumined by all the light which history and science can throw upon them. French lucidity displays itself in most attractive form, while in exhaustiveness the book is almost German. In the second volume, the author proposes to study "Les lois de la population et l'équilibre des nations." This will doubtless be a valuable contribution to political and social science.

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The greater part of the first volume is taken up with the history of the population of France from the earliest times to the present. It divides itself into three periods, of which the first (primitive) has left us no knowledge of the population, the second (mediæval) yields only inexact statements, while the third (contemporaneous) alone gives real, statistical (census) data. It would be presumptuous to criticize the elaborate array of historical facts from which M. Levasseur attempts to conjecture the number and condition of the French people during the early and mediæval periods. None but a special student of the history of the middle ages could do that. But it is extremely interesting to the statistical student to see by what ingenious expedients isolated historical facts are made to yield some indication of the number of the population. For instance, the basis for an estimate of the population of Gaul at the time of Cæsar is found in the mention of one hundred tribes numbering from fifty to one hundred thousand people each. M. Levasseur conjectures 6,700,000 as a probable number for that period. During the next eight hundred years, history speaks constantly of wars and devastations of the land; so that the population probably decreased. We find a confirmation of this conjecture in a calculation based on a record of the number of people on one of the great demesne estates. The ratio of people to territory in this case, if extended to the whole kingdom, gives a population of 5,284,000 on the present territory of France at the time of Charlemagne. The following centuries were prosperous, and in 1328 we have a record showing the number of hearths. From this, allowing four persons to the family, we get a population of 19,300,000; or, allowing four and a half, a population of 21,712,000 for all France. Then followed the Black Death, carrying off one-third of the population, according to the more reasonable authorities, and the Hundred Years' War; so that the population decreased. After the conclusion of that war, population recovered; and at the beginning of the sixteenth century we have contemporary authors with enough scientific interest to make estimates of the number of inhabitants. These estimates vary, however, from thirteen to twenty millions, — a fact which shows how little knowledge there was on the subject. The wars of Louis XIV and the expulsion of the Protestants again caused such a decrease as to excite alarm, and in 1697 the government ordered the intendants of the provinces to ascertain the number of inhabitants in their divisions. This first official estimate, although far from being exact, makes it probable that the population of France in 1700 was a round twenty millions. During the eighteenth century we have a great variety of estimates, the best of which places the population, on the eve of the Revolution, at twenty-six millions. Beginning with 1801, an official census has been taken every five years. The whole investigation forms an exceedingly

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interesting social history of France, and is additionally instructive in showing how the skill of the statistician comes to the aid of historical erudition in the attempt to construct a picture of past social conditions.

Of greater interest to the general reader is the first part of the book, the *Introduction sur la Statistique*. It is extremely moderate in tone, the author not claiming for statistics even the name of a science, except for that part dealing with population, which he desires to call "*démographie*." At the same time it contains capital observations on the purpose of statistical inquiry, the value of the results, statistical method and graphic illustrations, with a concise history of statistics. I commend it to those who desire an intelligible and lucid statement of the scientific criteria by which we are to direct statistical inquiry and measure the value of the results. It will temper the zeal of those over-ardent statisticians who stand ready to take the statistics of anything, from the morality of a community down to the condition of its city sewers; while it will perhaps open the eyes of those scoffers who assert that as good statistics can be obtained for one side of any question as for the other. Statistical inquiry is a method of scientific investigation adapted to certain purposes. To apply the method to unsuitable purposes is as absurd as to call in the jeweller to mend your iron gate, or to send your watch to the blacksmith for repair. The true value of statistics will appear only when we comprehend their limitations.

M. Levasseur points out how necessary it is to arrange inquiries so as not to excite the passions or offend the prejudices of the people from whom information is desired. So late as 1841 there were riots in the city of Toulouse on the taking of the census, the report having got abroad that it was to be used for fiscal purposes. In France, questions in regard to religious belief are apt to arouse sectarian passions, where the old religious differences have not yet been forgotten. Again, a census may easily be led into inquiries which are not worth the expense of making; as for instance in regard to the color of the hair and eyes, which, although sometimes of ethnological interest, is generally valueless on account of the uncertainty of the classification and the mixture of races. Again, some statistical facts are so purely administrative in character that they gather themselves, so to speak; as the convictions for crime, or the imports and exports. Others are not administrative, but can easily be gathered by administrative officers, such as births, deaths and marriages. Still others are neither administrative nor readily gathered by administrative officers, as special facts in regard to agriculture, factories, wages, indebtedness. It is much easier to bring the results of the first two classes to some degree of perfection than those of the last, and the statistics of the former are correspondingly more trustworthy. Finally, M. Levasseur points out how by skilful arrangement and com-

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bination a few inquiries may lead to a great variety of information. These few illustrations will suffice to show the knowledge and acumen of the author.

R. M. S.

Darwinism and Politics. By D. G. RITCHIE, M.A. London, Swan Sonnenschein & Co., 1889. — 101 pp.

It is impossible for a great idea to become dominant in any department of science without affecting men's thoughts on all other subjects that keenly interest them. This is illustrated in our own time by the ideas of the "struggle for existence" and "the survival of the fittest"; from biology they have been inevitably transferred to sociology and economics. Ernst Haeckel used them, justifiably enough perhaps, to prove the impossibility of realizing the ideal of equality which he attributed to socialists, and at the same time to demonstrate, as against Virchow, how harmless Darwinism was to society. Mr. Herbert Spencer and his followers go very much further than this, and regard the two principles as an unassailable basis for a policy of *laissez faire*, and as a justification for denouncing the very moderate amount of restraint upon the individual that English radicals have of late years been advocating. Fortunately the growth of historical culture has been too great to permit Mr. Spencer's sociology to take much hold upon students of economics. But among the professed students of biology, there is not infrequently found a disposition to pooh-pooh efforts at social reform as unscientific; and "the struggle for existence" has already become a phrase in the mouth of the man of the world.

Mr. Ritchie's little essay is a timely criticism of this application of biological conceptions to social problems. He begins by calling our attention to the ambiguity in the term "fittest," and to the fact that the question is much more complex than is often supposed, in that the struggle is not only between individuals, but also between groups in the same nation and between different nations. Then, coming to the demand that natural forces should be allowed free play, he points out the difficulty of distinguishing between "natural" and "artificial" without falling back into the unhistorical conception of a state of nature; and he justly observes that the not infrequent confession on the part of evolutionists, that the mitigation of the primitive struggle has led to a moral advance, concedes the desirability of displacing "natural" by human and conscious selection. There is in truth a struggle of ideas as well as of physical forces, and they have an equal claim to a fair chance. The recognition of this fact leads us to the fundamental difference between social evolution and all other development, namely, the appearance of consciousness. And yet, conscious effort, though we are often

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obliged to have recourse to it in order to counteract the unrestrained play of "natural" forces, is not necessarily in antagonism to them, and may frequently operate only to accelerate or facilitate their action. Mr. Ritchie strengthens his general argument by specific illustrations, and concludes by showing how desirable it is that conscious effort should take the shape of positive legal institutions, partly because they are necessary to give effect to opinion, partly because of their educative value. The educational influence of institutions is usually overlooked by those evolutionists who magnify the force of heredity. The discussion that is now going on as to whether acquired characteristics are ever transmitted by descent tends, as Mr. Ritchie remarks, to weaken the claim of heredity as the preponderating element in the formation of character.

W. J. ASHLEY.

The Primitive Family. By C. N. STARCKE, Ph.D., of the University of Copenhagen. New York, D. Appleton & Co., 1889. — 315 pp.

Die Indogermanischen Verwandtschaftsnamen. Ein Beitrag zur vergleichenden Alterthumskunde. Von BERTHOLD DELBRÜCK. [Abhandlungen der philologisch-historischen Classe der Kgl. Sächs. Gesellschaft der Wissenschaften. Bd. xi, No. 5.] Leipzig, S. Hirzel, 1889. — 228 pp.

In publishing an English translation of Dr. Starcke's *Die primitive Familie in ihrer Entstehung und Entwickelung* (Leipzig, 1888), the Appleton's have rendered a service to English and American students. In the first place, the book gives an extensive collection of facts and a useful review of theories. Besides this, it contains much suggestive criticism and some original points of view. Its field is wider than its title: it treats not merely of the family, but of kinship and of the organization of the clan and tribe.

From Dr. Starcke's point of view (as from Morgan's) it is not the family but the clan which determines primitive kinship. The bond of the clan is community of blood; the family is based upon a mixture of blood. Whether kinship shall be traced through the male line or through the female depends, therefore, rather upon the organization of the clan than upon that of the family. If the wife enters the husband's clan, we shall find agnatic kinship; if the husband joins the wife's, we shall find *Mutterrecht*. The prevalent and persistent tendency is in the former direction, towards father-right; and father-right seems to develop somewhat as follows. Clans tend to become exogamous because, according to Dr. Starcke, the man who captures a wife from a neighboring clan avoids all interference with the established family relations

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of his own clan. It might be added that it is cheaper to steal a wife than to buy one; and that in primitive society capture is the most respectable means of acquiring property. With wife-capture arises the idea of property-right in the wife, and in the children born of the wife; and this property-right is the basis of father-right and of agnatic kinship. In marriage by purchase, the basis of the husband's and father's right is the same. This, I take it, is what Dr. Starcke means by saying that fatherhood does not rest originally on the fact of procreation, but is essentially "juridical" (pages 121–127); but I am not altogether sure that I understand his line of reasoning. In other passages (*e.g.* on page 37) he seems to distinguish a primitive paternal authority based on pure force, and a later father-right, of a legal character, not based on force at all. But he may mean only that in the development of paternal authority, as in the development of all property rights, there is an earliest stage in which the social sanction has not yet converted force into right.

Society also tends, from the earliest period, to monogamy. Polygamy can never be general, because the number of women is never greatly in excess of the number of men. Polyandry Dr. Starcke regards as sporadic, rejecting McLennan's theories. He also rejects the theory that there is any necessary connection between the levirate or the *niyoga* and polyandry. So far his views coincide with those of most writers. But Dr. Starcke goes further: he rejects entirely the theory of primitive hetairism or promiscuity, and the derivation of mother-right from the impossibility of determining fatherhood. He disputes the priority of mother-right. Explaining mother-right on "residential" grounds, he tries to show that a community originally agnatistic may change its habits and derive relationship entirely through the female line. In a cattle-breeding community, for instance, men make it their first object to increase the number of stock. In such a community the head of the family will sell his daughter as early and for as high a price as possible. In the agricultural community, on the other hand, the chief demand is for labor. In such a community, the head of the house will not only oppose the departure of his daughter; he will seek to induce her wooer to become one of his household. Hence the herding community will recognize agnatistic kinship only, while mother-right will appear with the development of agriculture (pages 99, 100). This argument seems to me singularly fallacious. It bases the probability of wife-purchase entirely on the willingness of the woman's father to sell. But it takes two to make a bargain; and it may be insisted, with more reason, that the development of wife-purchase will depend on the desire of the wooer to buy. If this point of view be accepted, Dr. Starcke's data afford a conclusion directly opposed to that which he reaches. The herding community will maintain mother-right, because the man does not care

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to purchase a wife; but in the agricultural community, where labor is the prime requisite, the man who cannot steal a wife from a neighboring and hostile community will buy one within the tribe as soon as he is able.

Dr. Starcke's whole attack upon the theory of primitive mother-right seems to me inconclusive. He unquestionably shows that mother-right may exist, on "residential" grounds, when fatherhood is not uncertain. But surely an institution which has arisen on one ground may persist on another. He unquestionably shows that father-right may exist on "juridical" grounds (*i.e.* as a property right), when the customs of the community are such as to render paternity anything but certain; and he insists that if father-right does not rest primarily upon procreation, mother-right can never have rested upon the uncertainty of the father. This does not seem to me a necessary inference. He further endeavors to show that the *couvade* — which may be best described as the "confinement" of the husband — does not point to primitive mother-right or represent an attempt to find an analogous basis for father-right (pages 51, 52). Here again Dr. Starcke gives reasons which might account for the persistence of the institution, but which seem inadequate to explain its origin. His statement that the Arowaks and Macusis, who practise the *couvade*, have the system of exclusive maternal kinship, is not borne out by the data he furnishes on pages 37, 38.

All Dr. Starcke's conclusions on this point are conditioned by certain premises which are hardly likely to command general acceptance. According to his canons, we should never seek the origin of a custom in primitive conditions if its existence is explicable under contemporaneous conditions. He is disinclined to reason back from symbols to earlier realities and from fictions to primitive facts.

Dr. Delbrück's study of *Indo-Germanic Kinship Names* is a work of narrower scope than Dr. Starcke's, but certainly of no less value. The bulk of the treatise is purely philological, but in the last forty-five pages (*Sachlicher Theil*) the author sums up his conclusions. The ancient Aryan system, he thinks, is strictly agnatic. In the oldest literature of India the father's brother plays a more important part than the mother's brother. There is no philological evidence that polyandry was customary. There is no philological evidence of primitive promiscuity and resultant mother-right. On the other hand, the philological evidence does not, and cannot, disprove the mother-right theory. If the anthropological arguments in favor of that theory be deemed conclusive, all that the philologist can say is that the Indo-Germanic peoples seem to have emerged from promiscuity and mother-right before that period in their development with which Indo-Germanic philology deals. Dr. Delbrück's conclusions are largely identical with those of Dr. Edward Washburn Hopkins, whose treatise on the *Ruling Castes in Ancient India* he

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repeatedly cites. In praising the work of Dr. Hopkins, Dr. Delbrück pays a graceful compliment to American scholarship: Dr. Hopkins, he says, has treated his immense mass of material "mit amerikanischer Genauigkeit und Uebersichtlichkeit."

MUNROE SMITH.

Notes pour servir à l'Histoire littéraire et dogmatique du Droit International en Angleterre. Par ERNEST NYS, professeur à l'Université de Bruxelles. Première partie, Bruxelles, 1888. — 148 pp.

This is the first part of a work intended, as indicated by the title, to serve as a literary and dogmatic history of international law in England. While the term international law implies the existence of a general system of conduct, recognized and applied by all nations alike, yet we find in the history of each independent state something of especial interest in the development of particular doctrines. The work of Professor Nys, so far as published, does not attempt an exposition of the relations of England with other powers. It purports merely to show, under certain heads, the practices prevailing in that country, especially where they disclose either a simple difference from rules followed in other countries, or a contribution to the progressive development of international law. It is observed that during the second half of the middle ages, two questions which strongly affected the development of international law on the continent had comparatively little effect in England. These were the questions of the Church and the Empire. It was not through lack of effort on the part of the Church to bring the English people effectually under her dominion that they retained their independent position. During considerable periods of time the authority of the Pope was exerted, with a success often varying with the temper and disposition of the reigning prince. But the national spirit of the people was so strong that any concessions which were obtained served in the end only to cause a more emphatic assertion of independence.

The development of international doctrines in England was influenced far more by the civil than by the canon law. As the authority of the latter declined, that of the former, though for a time obscured, gradually took its place and increased. Ayliffe, in his history of the University of Oxford, referring to the condition of things about the middle of the sixteenth century, says that "the books of civil and canon law were set aside to be devoured with worms as savouring too much of popery." In 1536, Thomas Cromwell, as Chancellor of the University of Cambridge, enjoined that "no one should thereafter publicly read the canon law, nor should any degree in that law be conferred." A similar injunction was proclaimed as to Oxford. But although the civil law, be-

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ing linked with the canon law in disfavor, suffered for a time in credit and influence, various causes operated to restore and strengthen its hold. It was kept alive in the universities, and the changes wrought in the relations of England with other European powers in the sixteenth century imparted to its study an importance which can scarcely be overestimated. In 1524 first appeared the great work of Grotius, entitled *De Jure Belli et Pacis*. It may be said to have appeared in the fulness of time; for it was then that nations were beginning to take a wider view of their mutual duties and relations, and Grotius' appeal to reason and conscience in international dealings found a response and an application which could not have been expected earlier. His influence was felt in Great Britain no less than on the continent. Having held for centuries an attitude of isolation, England then began to enter effectively into the concert of European nations, in which the individuality of her development, and the growth of her physical power, especially at sea, had prepared her to play a striking part. The system into which she entered was an organization governed by the conceptions of the Roman law, the study of which then became essential. In 1549, a visitation of the University of Cambridge was made for the purpose, among others, of improving instruction in the civil law; and on this occasion the Duke of Somerset, then Protector of the Kingdom, wrote to Bishop Ridley, one of the visitors, saying: "And we are sure ye are not ignorant how necessary a study that of civil law is to all treaties with foreign princes and strangers, and how few there be at this present to the King's majesty's service therein."

The present part of the work of Professor Nys only brings us down to the time when the influence of England in European affairs became potent. It thus treats what may be regarded as the separately formative period of juridical notions in that country. It is hoped that in his future discussions he will trace the part played by England in European affairs with a view especially to illustrate her share in the development of international law as we find it to-day.

J. B. MOORE.

Problems of Greater Britain. By the Right Hon. Sir CHARLES WENTWORTH DILKE, Bart., author of "Greater Britain," *etc.* With maps. London and New York, Macmillan and Co., 1890.—12mo, pp. xii, 738.

Thirty Years of Colonial Government. A selection from the despatches and letters of the Right Hon. Sir George Ferguson Bowen, governor successively of Queensland, New Zealand, Victoria, Mauritius, and Hong Kong. Edited by STANLEY LANE-POOLE. Two volumes. London and New York, Longmans, Green and Co., 1889.—8vo, pp. viii, 460; viii, 467.

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Viewed in the light of the travel, the reading and the reflection that were needed for its production, Sir Charles Dilke's book, as a contribution to political science, is fully worthy to rank with the great works of de Tocqueville and Bryce. Its scope is vast; its treatment detailed but concise. Every page is crammed with important facts or equally important inferences. Nothing more can be attempted here than the most general indication of the subject-matter and of the author's point of view.

After an introduction strikingly free from rhetorical ornament, Sir Charles gives a rapid but interesting survey of the British possessions in North America. No one who is interested in the exact state of Manitoba, in Canadian protection or in the stability of Sir John Macdonald's government, should fail to read this portion of the book. In the fourth chapter of this part, the author discusses the future relations of Canada to the United States, reaching the conclusion that there is no likelihood of any immediate union. He has a few words to say about ourselves and incidentally, and justly, criticizes Mr. Bryce for not having dwelt enough on the race question in the South. While much of what Sir Charles himself says on this subject is true, he can hardly be said to have added to our knowledge. Part II is devoted to Australasia, and the space allotted is nearly twice that given to Canada. Victoria, New South Wales and Queensland have each a special chapter, the other Australasian colonies, including, of course, New Zealand, being treated together. The author's great power of grouping facts, his genial descriptive faculty, his knowledge of character, and his wide literary sympathies are all seen at their best in these chapters, which alone would have made the reputation of a lesser man. To particularize is impossible, but attention may be called to the fairness with which Sir Charles, himself a free trader, discusses the question of Australian protection; and the regret may be expressed that he did not give us more information as to the constitution and working of the various courts of law. The word "court," by the way, does not occur as an independent subject in the admirably full index which makes the volume so convenient a work of reference.

Part III treats of South Africa, to the importance of which as an imperial possession Sir Charles is fully alive. A noteworthy account is given here of the Transvaal and its able President, Paul Kruger; and one could wish that the notice of Sir Hercules Robinson, one of England's most capable governors, and his policy had been more extended.

Part IV is devoted to India, and nearly one half of its space is occupied with the momentous question of Indian defence. The author, whose knowledge of military affairs is well known, has many criticisms to make on the present condition of the Indian army, and he points out

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with great effect the danger of allowing Russia to move her frontiers forward. He earnestly recommends an alliance with China, for whose power he has great respect, believing in fact that the day is not far distant when Russia, China, and the English-speaking peoples will divide the world among them.

Part V gives a short and interesting survey of the Crown Colonies, and Part VI considers the "Problems" that give the book its name. Here the author's comprehensive grasp of facts and distinguished logical power do excellent service. Labor, the liquor laws, religion, education, colonial democracy — these are some of the topics treated. It is obvious that they appeal to every thinking man. Indeed one of the conclusions that Sir Charles is constantly drawing is that England must look more and more to the colonies for models in legislation and for the solutions of the problems that are confronting her statesmen at home. But this conclusion is just as applicable to the United States as to England. Australia has already taught us how to cast a pure ballot, although we were casting ballots when she was in her cradle; who knows what she will teach us in the future? Our labor reformers, our prohibitionists, our protectionists, our state socialists and their adversaries, can all find much in this book to set them thinking.

Part VII treats the greatest problem of all, *viz.* the future relations between the mother country and the colonies; and Part VIII the related problem of "Imperial Defence." In regard to the former, Sir Charles does not think that "the idea of imperial unity has made rapid progress of a practical kind;" in regard to the latter, he seems hopeful of the security of Great Britain, especially if she will not trust too exclusively to her navy.

All that can be said in conclusion is that every one should read the book for himself. The author has done for "Greater Britain" what Mr. Bryce has done for the United States; and if his method of treatment, as compared with that of the latter, is extensive rather than intensive, — if we miss at times Mr. Bryce's wonderful probing, — this fact is naturally accounted for by the greater scope of his subject. Sir Charles has given fresh proof of what has long been a belief among thoughtful observers, that in qualifications for enlightened statesmanship, he is quite the equal of any living Englishman.

It is well nigh impossible to lay down Sir George Bowen's book without feeling that its two volumes might with propriety have been reduced to one; but it is equally impossible to take leave of the veteran governor without feeling the highest respect for his character and no little satisfaction at having been allowed to read his own record of his life. For it is his own record, Mr. Stanley Lane-Poole occupying a properly subordinate position in the presentation. Possibly the dinners given in

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honor of Sir George are described at too great length, and his speeches and despatches have not always, perhaps, been sufficiently abridged. This indifference to the laws of proportion and a tendency to repetitions constitute the chief defects of the work, which is not without interest, however, to the student of politics.

The title-page gives some idea of Sir George Bowen's varied experience. Appointed governor of Queensland in 1859, he found himself, when only thirty-eight, in a position of responsibility from which many an older statesman would have shrunk. Moreton Bay had received with its new name a new constitution, and it was Sir George Bowen's duty to teach his people how to use their privileges wisely. His success was great, and it is hard to recognize in the Queensland of his time (1859–1868) any resemblance to the sturdy young would-be republic that has been giving the mother country so much trouble of late. The governor's life was not a bed of roses, however. Among the difficulties which he was obliged to meet and which he met successfully, was that one so familiar in our own history — the demand for an inconvertible paper currency. In 1868 Sir George was transferred to New Zealand, where he had the credit of bringing to an end the long and troublesome Second Maori War. In 1873 he received "the 'blue ribbon' of colonial governments — that of Victoria." Here the student will find a good account of one of those curious parliamentary deadlocks for which Australia is famous. The next eight years of Sir George Bowen's life were divided equally between the Crown Colonies of Mauritius and Hong Kong. Naturally these administrations are not as important to the student as those of the three great Australian colonies, but no one will grudge the time spent in reading of the delightful old French life in Mauritius or of the excursions that Sir George found time to make in China and Japan. The second volume ends with an account of a commission to Malta in 1888 and a reprint of Sir George Bowen's pamphlet on *The Federation of the British Empire* — an idea to which his whole book is distinctly partial.

W. P. TRENT.

A Manual of the Constitutional History of Canada. By JOHN GEORGE BOURINOT, LL.D., F.R.S. Can., Clerk of the House of Commons, Can. Montreal, Dawson Brothers, 1888. — 238 pp.

The Constitution of Canada. By J. E. C. MUNRO, Professor of Law, Owens College, Victoria University. Cambridge, University Press, 1889. — 356 pp., with Table of Cases and Appendix.

The literature on the constitutional history and law of Canada has increased with considerable rapidity during the last few years. The

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subject is an interesting one to the student of political science, and much research and ability are displayed in the works that are appearing. Dr. Bourinot's little volume purports to be a sketch of the constitutional history of Canada from the earliest period to the year 1888. As stated in the prefatory note, it is a revised edition of those chapters of the author's larger work on *Parliamentary Practice and Procedure in Canada* which are required for the study of political science in the University of Toronto. As a matter of fact, it can scarcely be called a constitutional history, though it is undoubtedly a very complete and instructive manual of the existing constitution. Only the first chapter, consisting of but six pages, is devoted to the period of the French régime. This is too little space for even the scantiest sketch of a period which covers more than two centuries of time; which saw the feudal estates and the custom of Paris firmly established; and which is characterized by three distinct governmental systems: that of the Viceroys, 1540–1627; that of the Company of New France, 1627–1663; and that of the Sovereign Council, 1663–1760. The constitutional history of this period furnishes an explanation of the bitter contests and retarding incongruities of the succeeding epoch of English domination. Only twenty-five pages are given to a review of this later period, 1760–1841, though it includes five different systems of government which were tried with the struggling colonists: that of the Military, 1760–1763; that of the King's Proclamation, 1763–1774; that of the Quebec Act, 1774–1791; that of the Constitutional Act, 1791–1838; and that of the Provisory Act, 1838–1841. Only very brief references are made to the more striking features of these systems, and we obtain but a superficial idea of the history of the political institutions during these eighty years.

With this slight sketch of the institutions established by the French and of the systems employed by the English we are brought to the period of Canada under local self-government, since 1841. Dr. Bourinot gives a clear outline of Lord Durham's report on the political difficulties of Canada, and a summary of the new constitution under the Union Act of 1840, by which Upper and Lower Canada, after a period of separation, were re-united and the new era of responsible government was inaugurated. He then reviews the events which led to the union of the Canadian provinces into the Dominion of Canada. This was effected by the passage of the British North America Act of 1867 (30 and 31 Vict. c. 3), which with three amendments (34 and 35 Vict. c. 28, 38 and 39 Vict. c. 38 and 49 and 50 Vict. c. 35) forms the text of the present constitution. The remainder of the book is devoted to a commentary on these acts and the judicial decisions and rules of construction regarding them; while the appendix contains a copy of each act. Dr. Bourinot's description of the existing constitution of Canada is less elaborate than

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Professor Munro's, but he gives the reader a clear outline of its chief characteristics. His judgment of its operation, and of the future of the Dominion, is agreeably sanguine:

> At last we see all the provinces politically united in a confederation, on the whole carefully conceived and matured; enjoying responsible government in the completest sense, and carrying out at the same time, as far as possible, those British constitutional principles which give the best guarantee for the liberties of a people. With a federal system which combines at once central strength and local freedom of action; with a permanent executive independent of popular caprice and passion; with a judiciary on whose integrity there is no blemish, and in whose learning there is every confidence; with a civil service resting on the firm basis of freedom from politics and of security of tenure; with a people who respect the law, and fully understand the workings of parliamentary institutions, the Dominion of Canada need not fear comparison with any other country in those things which make a community truly happy and prosperous.

Professor Munro's book is written in the form of a legal treatise. It is the most scientific — and possibly the best — text-book for the student of the constitutional law of Canada that has yet appeared. Besides the usual table of contents — which, by the way, is particularly well constructed — it contains a table of cases, a table of statutes, and an appendix which gives the text of the more important documents. The first chapter is devoted to an outline of the existing constitution of Canada, comparison being made with the constitutions of England and the United States. The second chapter is a concise *résumé* of the constitutional history of the various provinces of Canada. Beginning with the third chapter, Professor Munro devotes the remainder of the book to a strictly scientific analysis of the existing constitution. He derives the legal rules and constitutional customs which form the "constitutional law and custom" of Canada from seven sources, as follows: Imperial acts, Dominion acts, orders in Council, orders of Dominion and Provincial legislatures, usages and letters patent and instructions to the governor-general. After defining the scope of these sources, the author proceeds to set forth the law of the constitution.

Beginning with the provincial legislatures, he discusses their composition, and the details of their action and of their relations with the other departments. These legislatures consist, in general, of a lieutenant-governor appointed by the governor-general, a legislative council appointed by the lieutenant-governor, and a legislative assembly elected by the qualified electors. In action the legislatures present no features especially distinguishing them from other constitutional law-making bodies. In the provincial executive we find a strong bond of con-

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nection with the central government. The chief executive, the lieutenant-governor, is appointed by the governor-general of the Dominion. He presides over the administration of the government and is advised by a cabinet holding the confidence of the majority of the legislative assembly. The provincial judiciary consists of a well-graded system of courts, with judges appointed in some cases by the provincial and in others by the Dominion executive.

After disposing of the provincial institutions, Professor Munro takes up the discussion of the Dominion government, and pursues the subject under the same divisions and in substantially the same categories that are used in the treatment of the provincial legislatures. There are three elements which must be recognized in the constitution of the legislature of the Dominion, *viz.* the crown, the governor-general and the parliament. This last is composed of the usual two chambers — the names, Senate and House of Commons, showing the influence at once of Canada's great neighbor and of the mother country. In treating of the central executive, the author gives us the history of the office of governor-general, as well as the discussion of his duties and powers. Being appointed by the British crown, this officer forms the link of connection with the mother country. In his relation to the Dominion he is assisted by the Privy Council, which is simply his cabinet of ministers, who must hold the confidence of the House of Commons.

Professor Munro's analysis of the central judiciary distinguishes three classes of tribunals: 1. Supreme and Exchequer Courts; 2. Courts for the trial of controverted elections; 3. The Maritime Court of Ontario. In general the Supreme Court is the appellate court of last resort, but by permission of the judicial committee of the (Imperial) Privy Council appeal may sometimes be taken to this latter tribunal. As to the appointment and tenure of the judges, it is shown that the British practice is followed, — appointment by the executive and tenure during good behavior.

A most important question in a federal system like that of Canada is the distribution of the subjects of legislation between the Dominion and provincial legislatures, together with the rules of constitutional interpretation in case a conflict arises. The author's chapter discussing the provisions under this head is one of his best. The treatise closes with a chapter on the Dominion control of the provinces and one on the Imperial control over the Dominion. Professor Munro confirms the general impression that the control in each case is very limited.

The usefulness of this treatise is greatly enhanced by the typographical make-up. Judicious spacing and paragraphing materially aid the reader in grasping the logical division of the subject and the

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sequence of the parts. Abundant citations from the original authorities, moreover, afford every facility to the reader for verification or further research.

THOMAS D. RAMBAUT.

The Federal Government of Switzerland. By BERNARD MOSES, PH.D. Oakland, California, 1889. — 256 pp.

Switzerland is certainly now receiving a fair share of attention from students of politics. Within a short time two English translations of the text of its federal constitution have appeared, and also two systematic works on the public law of the confederation, besides the chapter on the same subject in Wilson's work on *The State*, and many magazine and review articles. Of the two systematic works — that of Adams and Cunningham, previously reviewed in the POLITICAL SCIENCE QUARTERLY, and the present one — it would be difficult and even useless to attempt to decide which is the better. They are both valuable and they supplement each other well. The work of Moses is evidently that of a man much more familiar with the course of speculation in the field of comparative politics and with the facts relating to federal government in general, than are the authors of the other book.

The present work is not so large as the earlier, and as it contains considerable information about other federal governments and some theoretical discussions, it omits many topics fully presented in its predecessor. Indeed, Moses' work should rather be called an essay on comparative constitutional law of federal unions, with special reference to Switzerland. The chapter on "Distribution of Power," for example, containing some forty pages, devotes only three of them to Switzerland, — the rest being occupied with an interesting essay on the tendency in a growing government first to the concentration and then to the diffusion of power. The chapter reminds one strongly of the treatment of the same subject in the work on *Comparative Politics*, by the same author and Mr. Crane jointly.

Among the governments receiving much attention in the book are those of South America. This is the more welcome as so little work has been done in this field by English scholars. Mexico, the Argentine Confederation, Columbia and Venezuela receive special attention, — Canada, Germany and the United States being frequently referred to by way of comparison. While most of the facts given by Professor Moses about the Swiss government are also contained in the work of Adams and Cunningham, yet they are often put in different connections, so as to bring out more clearly their significance. Students of comparative politics will recognize this advantage and will agree, I think, that

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Professor Moses has made a valuable contribution to our stock of works on political science — a stock which, although rapidly growing, is at present meagre enough.

E. J. JAMES.

Éléments de Droit Administratif à l'usage des Étudiants des Facultés de Droit. Par J. MARIE. Paris, L. Larose et Forcel, 1890. — 651 pp.

It is unfortunate for the study of comparative administration that most writers on French administrative law follow so closely, in the contents of their books, the decree which governs the curriculum of the French law schools. For, while this decree undoubtedly indicates the subjects which, from the practical point of view, are of the greatest interest to French lawyers, it does not require the student to devote any time to a long series of matters which, from the point of view of comparative administration, are of the utmost importance. The result of this omission must necessarily be that such subjects are either not treated by the ordinary French writers with the fulness which they deserve, or else are absolutely neglected.

The latter is often the case in the book before us. While M. Marie treats very fully such matters as the organization of the administration and the general powers of the most important officers, yet when he comes to what the French call *matières administratives, i.e.* the various subjects over which the administration has jurisdiction, his book leaves very much to be desired. Almost the only such matters which are given any treatment at all are the exercise of the right of eminent domain, which in all French works on administration receives an amount of attention out of all proportion to its importance to the student of comparative administration; the matter of highways, which, like that of eminent domain, is extremely technical; the financial administration, and the military administration. The full treatment of this latter subject is valuable, however, on account of the fact that the law of recruiting has been very much modified by recent legislation.

The professed aim of the author has been conciseness. As the title of the book indicates, it is the elements of administration rather than the special development of all points in the administrative law, which he has undertaken to set forth. Though this fact will make the book useful to the beginner, it detracts from its value to one who has already mastered the elements and is in search of information on details. This is so not only because of the elementary character of the work, but also because in his efforts to be concise the author has seen fit to omit the authorities for his statements. Although he assures us in his preface that "il n'est pas . . . une affirmation, une ligne de ce livre qui n'aient

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été vérifiées et controlées," still the student always feels more confidence in a work which contains references for all important statements. It seems as if the necessary references could have been made without yielding, as M. Marie seems to think inevitable, to any "goût d'une érudition parfois assez encombrante."

In the very beginning of the work, a peculiar classification of the law is adopted, which certainly has its merits, as clearly distinguishing a branch of law which has not always been sufficiently differentiated. I refer to that part of constitutional law which American writers have designated the bill of rights, *i.e.* those fundamental principles which guarantee to the individual a sphere of liberty upon which the government may not encroach. This branch of the law it has been the peculiar province of American political science to develop. In France, however, it cannot be said to exist, at least so as to bind all the branches of the government. The legal rules determining such sphere have not been put into the present French constitution, but are to be found in the ordinary law of the land, which is passed and amended and repealed by the legislature. It is rather remarkable, therefore, that a Frenchman should take special pains to assign to such rules a distinctive character. It is a sign of the adoption in France of what we in the United States have been working out with so much pains during this century. But while we can commend this attempt to distinguish a separate division of the law, we must protest against the name which the author has adopted to designate it. He calls it *droit public proprement dit.* But this term is already appropriated by science to designate what the Germans name *Verfassungsrecht, i.e.* the law organizing the great public powers and authorities in the government and determining their relations one to another.

Taking M. Marie's book for what it claims to be, an elementary treatise on the French administration prepared mainly for the use of students, it may be said without hesitation that the work is well done and that the principles laid down in it are clearly and concisely formulated.

F. J. G.

A Treatise on the Law of Public Offices and Officers. By Floyd R. Mechem. Chicago, Callaghan and Company, 1890. — cxvii, 751 pp.

The probable reason why no book has ever been written in the English language upon the law of officers is that officers have never occupied so important a place in either England or the United States as upon the continent. The English idea of an officer has always been that he was simply a private citizen, who for the time being was aiding in the

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management of public affairs, and to whom the legal rules governing the relations of ordinary agents might be applied. The officer was regarded as simply the agent of the government. At the same time, however, the gradual growth of the functions of government has brought into being a class of almost professional officers, quite unknown to the early English law, and has so largely increased the sphere of action of all officers that the decisions of the courts in regard to the relations of persons holding official position have become very numerous. In these decisions the courts have gradually departed from the original idea that the officer is simply a private person who happens to be discharging public functions and to whom the ordinary rules of private law might be applied. But up to the present time the officers have not become such important members of society as to have made necessary the incorporation into the statute law of the various legal rules which govern their relations. On this account the book under consideration is a very welcome addition to the literature of the official relation.

The original conception of an officer in the English law has, however, strongly influenced the author of this work. The subject is treated almost altogether from the standpoint of the private lawyer, or at any rate from that of the practising lawyer. No attempt is made at such a classification of officers as would be of value to the student of political science and administration. The book will not give the reader a good idea of the official system, because in many instances the statutes which regulate the details of the official relation are hardly touched upon. At the same time, however, Mr. Mechem has done a great service merely by gathering together in an accessible form the decisions of all the courts of this country relative to the official relation. The "Table of cases cited" informs us that reference is made to no less than 6232 cases. These cases are, moreover, quite scientifically arranged.

Mr. Mechem starts out by showing, or at least by trying to show, what are public offices and who are public officers. He does this, however, more by a method of enumeration than by the formulation of any general principle. In the way so dear to the hearts of English and American law-book writers, he begins with the letter A (in this case with the Assessor) and ends with the letter W (Watchmen of public buildings) and informs his readers what the courts have decided as to the official or non-official character of all persons connected with the government whose titles begin with any of the intervening letters. It must be said that such a method, though probably of use to the practising lawyer for purposes of reference, does not throw much new light upon the vexed question, what is a public office. The reader rises from the consideration of this list of positions with a somewhat confused

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feeling that the question is a very difficult one to decide and, we may add, with a strong conviction that the writer of this book, at any rate, has not decided it. Still one can hardly blame Mr. Mechem for not having added anything to the science of this subject. The question, what is an office, is one which cannot be answered from pure theory, but requires for its determination a careful consideration of the judicial decisions. These, however, are very conflicting and show a marked tendency to include under the term officer almost every person, whatever be his station, who is permanently connected with the government.

The other questions which Mr. Mechem treats are those of eligibility and the method of filling offices; the authority, duties and liabilities of officers; the judicial control which is exercised over them; and the methods of terminating the official relation. Some of these matters are treated with a commendable fulness, especially those which are of particular interest to the practising lawyer. This characteristic is only natural, since the book is written for the profession rather than for the student. Some matters of immense importance are passed over with little more than a bare mention. Such for example is the case with the subject of impeachment. But still, even admitting that the work has been written mainly with the idea of lessening the labors of the profession, it will be of great value to the student; for the tedious work of collecting the cases on this most important subject of administration is now done.

F. J. G.

Wörterbuch des Deutschen Verwaltungsrechts. In Verbindung mit vielen Gelehrten und höheren Beamten, herausgegeben von Karl von Stengel. Vol. I. Freiburg, i. B., J. C. B. Mohr (Paul Siebeck), 1890. — viii, 895 pp.

This dictionary (or cyclopædia, as we should call it) of German administrative law is one of the things which students of German administration have long felt the need of. While the French law has been treated most fully in the various dictionaries, such as Block's and Béquet's, the German law has, up to the appearance of this work, been treated only in the various commentaries, which, however excellent in their way, have never offered the student such a wealth of material as a dictionary of this kind will of necessity contain. The first volume begins with *Abgaben* and ends with *Kunstschulen;* thus containing all that will be said on the general subject of local government. The editor, Professor von Stengel, is already well known to students of German administration through his most excellent work on the organization of the Prussian administration and his more general work on German administrative law. As professor of law at the university of Breslau, most of his work

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thus far has been in the domain of administration. He is therefore eminently well fitted for the task here undertaken. As the title of the work indicates he has availed himself of the aid and collaboration of the men most celebrated in Germany in the branches which the dictionary attempts to cover. Among the contributors we find such names as Gneist, Kirchenheim, Hinschius, Laband, Sarwey, Stengel, von Mayr, Reitzenstein, Munsterberg, Zorn, G. Meyer and others, who have made for themselves reputations both in the special lines to which their articles are devoted and in the general subject of administration. A particularly valuable feature of the dictionary, and one which will make its possession indispensable to others besides mere administrative lawyers, is the fact that, wherever this is possible, the subjects are treated from the economic and financial as well as from the purely administrative point of view. Take for example the space devoted to the *Gemeinde*. We find an article on *Gemeinde* in general, and others on *Gemeindeanlehen*, *Gemeinde-Bezirk*, *Gemeinde-Dienst*, *Gemeinde-Gebühren*, *Gemeindehaushalt*, *Gemeinde-Vermögen*, *etc.*, down to *Gemeinde-Verwaltung*. The advantage of such an arrangement is that one who desires information upon some particular part of the administration or finances of the *Gemeinde* is not obliged to read through the whole long chapter. Another noteworthy characteristic of the dictionary is the full bibliography and list of *Quellen* attached to each of the articles. This single feature makes the work simply invaluable.

Among so many articles by so many distinguished men it is almost impossible to select any as pre-eminent without casting an undeserved shadow upon the others. Mention ought to be made, however, of those by Dr. von Mayr, of Munich, who has done a large part of the financial and statistical work, and especially of his titles *Abgaben* and *Erbschaft- und Einkommensteuer*.

The dictionary is to be completed in a second volume, whose appearance may be expected shortly.

F. J. G.

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RECORD OF POLITICAL EVENTS.

[From November 1, 1889, to May 1, 1890.]

I. THE UNITED STATES.

1. The National Government.

FOREIGN RELATIONS. — **The Samoan treaty**, negotiated between the United States, Great Britain and Germany in June, 1889, was ratified by the Senate on the 3d of February, 1890. The basis of the instrument is a recognition of the independence and neutrality of the Samoan Islands. It is provided that Malietoa be restored to the throne, and that his successor shall be chosen in accordance with the laws of the natives. For the determination of all questions arising under the treaty, as well as a very wide range of controversies involving foreigners and natives, a court is established, presided over by the "Chief Justice of Samoa," who is to be appointed by agreement of the three powers, or, if they cannot agree, by the King of Sweden. Lesser authorities are appointed for the determination of special matters of difficulty, and an elaborate code of regulations is laid down to govern the intercourse between foreigners and the natives. — A new **extradition treaty with Great Britain**, negotiated by Secretary Blaine and the present British minister, Sir Julian Pauncefote, was ratified by the Senate on the 18th of February, 1890. Nine new crimes are brought within the scope of the process of extradition, *viz.* manslaughter, counterfeiting, embezzlement and cognate offences, fraud by agent or corporation officer, perjury, rape, abduction and kidnapping, burglary, piracy, several crimes on the high seas; and offences against the laws of both countries for the suppression of slavery and slave-trading. Offences of a political character are specifically excluded from the operation of the treaty; and, in any doubtful case, the country in whose jurisdiction the fugitive is at the time shall decide finally. Article three provides that no person shall be triable for an offence other than that for which he was surrendered, until he shall have had an opportunity to return to the country which gave him up. The Senate made certain amendments to the document as submitted, defining manslaughter, which is not precisely the same in the two countries, and dropping from the list of offences that of obtaining money under false pretences. An important difference between this treaty and that rejected by the Senate in President Cleveland's term is the absence in the present treaty of the clause contained in the earlier which provided for extradition in case of "malicious injuries to property, whereby the life of any person shall be endangered, if such injuries constitute a crime according to the laws of both the high contracting parties." The treaty went into effect April 4. — The difficulties with Canada in reference to the **seal-fishing in Behring Sea** have been under consideration between the British minister and the State department, though

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no official announcement as to results has been made. Sir Charles Tupper, the Canadian High Commissioner at London, arrived in Washington in the latter part of February to take part in the negotiations. — **The International Marine Conference** at Washington, which was in session when this RECORD opens, concluded its work December 31. No official report of its conclusions has been made public; for the delegates of each nation will report to their government in the form of recommendations, and legislation will be necessary to give effect to these. All but five of the sittings of the conference were devoted to the discussion of rules for avoiding collisions at sea, in order to eliminate all confusion and uncertainty from the code. Other subjects considered and passed upon were: Internationally uniform systems of buoyage, of surveying vessels and of signals for giving notice of approaching storms. The proposition for a permanent international marine commission was not approved. — **The International American Conference**, or "Pan-American," as it is popularly called, was in regular session from November 18 to April 19. The following recommendations were adopted by the conference: *That, for the prevention of epidemics, uniform sanitary regulations be adopted* by all the nations, on the basis of those established by previous sanitary conferences among the states of South America; that the treaties on international patent and trade-mark rights, agreed to by the countries of South America at the recent congress at Montevideo, be subscribed to by the remaining nations of the hemisphere; that the nations bordering on the Gulf of Mexico and the Caribbean Sea enter upon some arrangement for establishing first-class steamship service between their several ports by government aid; that on the Atlantic coast government aid be given to steamship lines between the United States and Rio Janeiro, Montevideo and Buenos Ayres, and on the Pacific, to lines between San Francisco and Valparaiso, touching at intermediate points — all subsidies to be under conditions carefully drawn; that all possible expedients be adopted to facilitate the transmission of merchandise through one country to another, and that the customs administration be as far as possible simplified and made uniform; that reciprocity treaties be negotiated between the various American republics, each conceding the free introduction of the peculiar products of each; that a monetary convention of the powers concerned be held within a year to arrange a system of uniform coinage; and that the metric system of weights and measures be uniformly adopted. Not all of these recommendations, however, were in a sufficiently definite form to amount to more than a general expression of opinion.

CONGRESS. — The Fifty-first Congress began its first session December 2. **The organization of the House of Representatives** was effected by the choice of Mr. Reed, of Maine, as speaker, Mr. McPherson, of Pennsylvania, as clerk, and the minor officers generally as determined upon by the Republican caucus. — **The President's Message** announced general goodwill and cordiality in our relations with other governments. Whatever questions were pending were declared to be in process of satisfactory adjustment. In domestic affairs, general prosperity was announced. The surplus in the treasury for the last fiscal year, above all provision for the sinking fund, was $57,470,129.59. For the ensuing year the estimated surplus is $43,569,522.30.

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The President recommended immediate action by Congress toward reducing treasury receipts so as to prevent the accumulation of surplus funds. The expedients necessary to get the money back into circulation were often of doubtful propriety, and the loaning of public funds to banks without interest he especially considered to be an unauthorized and dangerous policy. Such deposits now outstanding should be withdrawn and applied to the purchase of bonds. A revision of the tariff law was recommended, both as to administration and schedules. Assurance should be given, however, that necessary changes should be so made as not to impair the just and reasonable protection of our home industries. The free list might be extended by the addition of articles not competing injuriously with domestic products, and the internal taxes upon tobacco and upon spirits used in the arts might be removed. Upon the currency question, the President expressed himself fearful as to the permanence of the existing harmony between silver and gold, but was not prepared to discuss fully the proposition of the secretary of the Treasury. Appropriations were recommended for adequate coast defence and harbor improvement. The President recommended that Congress grant pensions to all honorably discharged soldiers and sailors who are dependent upon their own labor for maintenance and, by disease or casualty, are incapacitated from earning it. He reported progress in the way of civil service reform, especially through making public the list of eligibles and through the extension of the law to the railway mail service, and asked for additional appropriations for the commission. National aid to education was recommended, especially for regions where the emancipated slaves burdened the taxpayers. Mr. Harrison saw no stronger constitutional objection to such aid than to what had already long been given in the form of land-grants. He thought it best, however, to limit the aid to an annual appropriation, so as not to tempt the local authorities unduly to postpone assuming the whole burden themselves. The race question was touched on another side by the recommendation that Congress consider measures to secure to all the people a free exercise of the right of suffrage and every other civil right under the constitution. An extension of federal control over the elections was the method suggested. The closing recommendation of the message was that of such liberal appropriations for the ocean mail service as might encourage the establishment of American steamship lines to Central and South America, China and Japan. — The calm consideration of public business was seriously interrupted at the very opening of the session by a **defalcation in the office of the sergeant-at-arms** of the House. That official, as the medium for the payment of the members' salaries, acts as a sort of private banker for the congressmen, and the flight of his cashier with $72,000 of the funds in his care, including many unpaid salaries, raised important questions of responsibility for the deficit. A special committee appointed to investigate the whole matter reported, on January 14, a bill making an appropriation to cover all deficiencies in amounts due to members. It was held that, as the sergeant-at-arms was constructively a disbursing officer of the government, the government was responsible for the salary money till actually paid over to the members. This, however, did not cover the question of private deposits, of which it was proved that there were many. After an animated debate, the House rejected the bill. At the

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same time, a proposal to send the claims to the courts for decision was also rejected, and the sufferers were left without relief. — The complete list of **House committees** was announced December 21. The chairmen of the most important are: McKinley of Ohio, Ways and Means; Cannon of Illinois, Appropriations; Kelley of Pennsylvania (succeeded at his death by Burrows of Michigan), Manufactures; Dorsey of Nebraska, Banking and Currency; and Hitt of Illinois, Foreign Affairs. — On January 29 an important conflict arose in the House as to **the speaker's power to count a quorum**. The Committee on Rules had not yet reported, and, as the Republican majority was very small, the inevitable absences left it in the power of the Democrats to obstruct legislation by refusing to vote. On the day mentioned, a certain vote, by roll-call, stood 161 yeas and 2 nays, revealing no quorum, though the seats on the Democratic side were well filled. Speaker Reed thereupon, with a short explanatory statement, announced that, having seen many of the silent members before him and having caused record to be made of the fact, he ruled that there was a quorum present within the meaning of the constitution. The minority appealed from the ruling, and insisted very strongly on the principle that the result of the roll-call was the only constitutional evidence of a member's presence. They argued that the will of the member, for which he was responsible only to his constituents, was conclusive as to the member's participation in the business of the House, and maintained that to vest in any one man the arbitrary power to count a quorum would open the way to grave scandal. The unbroken precedent of the House was admitted to be with the minority. The speaker, however, resting upon the necessities of the public business and the inherent absurdity of a member's being simultaneously present and absent, carried through his plan, though not without several days of great disorder. The minority felt it an especial grievance that so radical a change of practice should be made by arbitrary act of the speaker rather than through regular action of the House, as expressed in its rules. That this feeling prevailed among the majority also seems evident from the fact that the long-delayed report of the Committee on Rules was presented early in February. As finally adopted on the 14th, the code presents two new and effective **restraints on filibustering**. The speaker is authorized to have members whom he sees in the House put on the journal as present for the purposes of a quorum, and to refuse to put motions which he deems offered merely for purposes of delay. — Little **legislation** of importance has been completed at the time this RECORD closes. A joint resolution has been passed congratulating the people of Brazil on the adoption of popular government. The Blair Educational Bill, which had been passed by the Senate on two previous occasions, was defeated in that body after a long discussion, by a vote of 32 to 36. The Senate passed an Anti-Trust Bill establishing severe penalties for combinations of citizens or corporations of different states or of the United States and foreign countries, designed to prevent industrial or commercial competition; and the Dependent Pension Bill, giving $12 per month to indigent veterans unable to earn a support. Both these measures suffered either amendment or substitution in the House and the end has not been reached. The House has passed bills admitting Wyoming and Idaho as states. On the latter measure the Democrats ab-

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stained from voting, and forced the speaker to count a quorum, for the purpose, as they said, of testing the constitutionality of the new rule. Important measures that have passed through the committee stage, in addition to those mentioned below under TARIFF and CURRENCY, are: A bill to amend the Interstate Commerce Act, abolishing "ticket-scalpers" and making many modifications in details of the law; and two Federal Elections Bills, one in the House, placing Congressional elections under control of the federal district judges, and introducing the main features of the Australian ballot system, and another in the Senate, extending the present system of supervisors and marshals under direction of the circuit court judges.

THE TARIFF. — An important decision was rendered by the United States Supreme Court on January 6, involving the construction of the tariff law. There had been a long standing doubt as to whether silk ribbons used for hat trimmings should pay 50 per cent duty as silk or 20 per cent as hat trimmings. The government finally settled into the practice of demanding 50 per cent. Importers protested, and the matter finally was decided in their favor as above. The decision rendered necessary the restitution to merchants of some $6,000,000 collected under the illegal construction. The protests of the silk manufacturers against the duty decided to be the true one resulted in the prompt passage, on January 31, of a bill putting ribbons in the category of other silk goods at the 50 per cent rate. — In accordance with the President's recommendation of revision of the administrative features of the customs laws, what is known as the **McKinley bill** was passed in the House of Representatives on January 25. The measure in general had the approval of all interested parties, except certain of the provisions in reference to undervaluation. The penalties for such offences were made more severe, and the decision of an appraiser, if confirmed by a board of three appraisers, was made final as to the facts in any case of disputed values. An advance of 20 per cent over the invoice value by the appraisers was made conclusive evidence of fraud, for which proceedings might be begun for condemning the goods, and the importer was compelled to assume the burden of proof that no fraud was intended. In any case before a judge no jury was allowed. This was the subject of most vigorous protests by leading importers, and some of the more objectionable features were modified by the Senate committee when considering the bill; *e.g.* the variation between invoice and appraised value that should entail confiscation was raised from 20 to 40 per cent. — The House Committee on Ways and Means began during the Christmas holidays to prepare for a **revision of the Tariff** schedules. After the usual protracted "hearings" of interested parties, the bill prepared by the majority of the committee was reported to the full committee on March 31, and on April 16 was presented to the House, accompanied by an elaborate report. The Democratic minority also presented a report. The majority declared their purpose to be not only to reduce the revenue, but also to foster and diversify American industry. "We have not been so much concerned about the prices of the articles we consume as we have been to encourage a system of home production that shall give fair remuneration to domestic producers and fair wages to American workmen, and by increased production and home competition insure fair prices to consumers." The opinion was expressed that every

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increase proposed in the bill would, by cutting off importation, decrease the revenue. The reduction contemplated by the committee was stated to be about $60,936,936 from customs, and $10,327,878 from internal revenue. Important features of the bill are as follows: As to internal revenue, abolition of all kinds of licenses, heavy reductions in manufactured tobacco, except cigars and cigarettes, and abolition of the tax on alcohol used in the arts. As to import duties: an increase on wool and woollen goods and on tin plate; raw and the lower grades of refined sugar on the free list, with a bounty of 2 cents per pound for fifteen years to domestic producers; and a bounty to producers of silk cocoons and reeled silk. Steel rails are reduced $4 per ton. The duties on agricultural products are, in general, increased, — barley, buckwheat, oats, butter and eggs, the last being an addition to the dutiable list. As the bill was first announced, hides, which had been on the free list for many years, were taxed, but, after some vacillation under the animated protests of the leather manufacturers, the committee finally restored them to the free list.

THE CURRENCY. — The conviction that something must be done to counteract the tendency toward contraction, due to the withdrawal of national bank circulation, has aroused much new interest in the silver question, as well as in propositions for prolonging the usefulness of the banks as issuers of notes. **A National Silver Convention** met at St. Louis, November 26, consisting of several hundred delegates, appointed by state governors. The states east of Ohio sent only four delegates, however, and those to the south of the Ohio River, not more than thirty. All that was done by the assembly was to express very fervid sentiments in favor of free coinage of silver and against the gold mono-metallists. — **Secretary Windom's silver coinage plan** was incorporated, with some additions and modifications, in a bill prepared by the House Committee on Coinage, in March. This provided for the issue of treasury notes in return for silver deposited with the Treasury, at a rate determined by the market price of silver at the time of the deposit. But no foreign bullion or coin could be received, and stringent regulations were provided to insure the enforcement of this provision. This was an addition to the original plan, and was intended to exclude the great mass of silver in Europe, which it was feared would immediately be sent to the United States. The notes were redeemable in bullion at the market price at the time of presentation, or in gold, if the government so chose, or in standard silver dollars, if the person presenting so chose. Deposits of bullion would be refused when the market price was above $1 for 371¼ grains of pure silver. — On February 25, the **Senate Finance Committee's silver bill** was reported. It also aimed at increasing the silver element in the currency, but differed from the Windom bill in many important respects. It required the purchase of silver bullion to the amount of $4,500,000 per month, at the market price, and of all the gold bullion presented. Against this metal, treasury notes were to be issued, redeemable on demand in "lawful money of the United States," without distinction of metal. The bullion deposited was to be coined. A joint caucus of Republican senators and representatives, on April 24, agreed upon a compromise bill which embraced the leading features of the Senate plan, with a proviso taken from the Windom bill, allowing the secre-

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tary of the Treasury, at his discretion, to redeem the notes in silver bullion at the market value on the day of redemption. Another rather important modification of the Senate bill was that the monthly purchase required was 4,500,000 ounces of silver instead of $4,500,000 worth. — The question of the **national bank note circulation** has been discussed on the old lines by both the treasury officials and Congress. A bill drawn by Mr. John Jay Knox, and submitted to Congress, connects the question of the bank circulation in a measure with the silver question. The plan provides that the banks may circulate notes to an amount up to 75 per cent of their capital. Of these notes 70 per cent shall be secured by United States bonds; provided, however, that if a bank choose, one-half of this security may be furnished by deposit of gold or silver bullion or coin at the current market price. If at any time the market value of either metal or bonds falls below the amount of notes based upon it, the depreciation must be made up by the deposit of more metal. With reference to the future decrease of bonds, provision is made for the gradual accumulation of a "safety-fund" of metal, upon the security of which the notes may continue after all the bonds are paid off. Another bill, introduced by Senator Hiscock, provides for a circulation based upon approved real-estate mortgages, gold and silver bullion, storage warrants and warehouse receipts of pig-iron, cotton, and wheat.

THE ADMINISTRATION. — Of the various heads of departments, the **report of the secretary of the Treasury** excited the greatest interest. After elaborate arguments in behalf of the recommendations incorporated in the President's message in reference to the surplus, tariff reform and subsidies for commerce, Secretary Windom attacked the silver question and set forth, at great length, a new plan for dealing with it. The problem, as he stated it, is to satisfy the popular sentiment which demands a bi-metallic currency, by devising some certain means for keeping in circulation the two metals at a relative face value widely different from the market value of bullion. After showing that all the plans formerly suggested were objectionable in some vital point, he recommended the following measure: "Issue treasury notes against deposits of silver bullion at the market price of silver when deposited, payable, on demand, in such quantities of silver bullion as will equal in value, at the date of presentation, the number of dollars expressed on the face of the notes at the market price of silver, or in gold, at the option of the government, or in silver dollars at the option of the holder. Repeal the compulsory feature of the present coinage act." The secretary's proposition did not meet with a very enthusiastic reception by any of the parties interested in the matter. A strong objection made to it was the opportunity it created for speculation in silver. It was to meet this that discretion was given by the plan to the secretary both as to the amount of silver bullion receivable and the kind of metal to be used in redeeming the notes. But this discretion was the subject of as serious criticism as the danger it was devised to obviate. — In reference to the practice of depositing the surplus in national banks, Mr. Windom denounced the idea in vigorous terms, and declared his purpose to commence a gradual withdrawal of such deposits and to devote the funds to the purchase of bonds. The amount of these deposits, on Nov. 1, 1889, was $47,495,479. — The most **important appointments** to office by the President have been:

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United States Circuit Judge David J. Brewer, of Kansas, to be associate justice of the United States Supreme Court, confirmed December 18; William H. Taft, of Ohio, to be solicitor-general, and Augustus Heard, of Massachusetts, to be minister-resident to Corea, confirmed February 4; Robert Adams, minister to Brazil, January 30; Charles Emory Smith, minister to Russia, February 10; Lewis A. Grant, assistant secretary of War, April 5. — The working of the **Civil Service Law** in reference to appointments received a very warm eulogy from Secretary Windom in his annual report. Both for the relief from the distraction incident to the old method and for the quality of the working force secured, he declared the reformed system far preferable to the old, and announced that the extension of the former to the appointment of chiefs of division was under consideration. The friends of the reform agree, in the words of *The Nation*, that President Harrison's "administration of the Civil Service Act has been, on the whole, very faithful." Outside of the act itself, much opportunity for criticism has been found, especially in the Post-office department. About 33,000 changes had been made here by the close of the first year. The removal of Mr. Saltonstall, customs collector at Boston, after he had declined an invitation to resign, occasioned considerable comment, as Mr. Saltonstall was a well-known friend of the reform and had conducted the custom-house administration strictly in accordance with its principles. — **An investigation of the Civil Service Commission**, by the House Committee on Reform of the Civil Service was instituted February 19, under resolution of the House. Charges were made against the commission, first, of having retained in its service an employé who had given out to a candidate a copy of an examination paper; and, second, of having secured the appointment in the pension department of a clerk who had been discharged for cause from a Western post-office. No report has yet been made, since the committee has entered upon a general investigation of the workings of the law and of the commission from the beginning. — Through the instrumentality of the commission, warrants were issued on March 26 against the signers of a circular soliciting money from government clerks for political purposes, in connection with the November election in Virginia. The object is to test the efficiency of the law making such action a criminal offence. The annual motion in the House to strike out the appropriation for the support of the commission was defeated, April 26, by 61 to 120. — **The report of the Interstate Commerce Commission** announced that seventy-three formal hearings had been either held or scheduled during the past year. Its general investigation of free passes showed a great decrease in the number issued, but was not concluded at the date of the report. The competition of Canadian railways was discussed, but while it was shown to bear quite heavily on United States roads, the commission seemed to feel that the effects were not altogether bad. In addition to certain amendments, the following additional provisions to the law were recommended: The prohibition of commissions from one company to passenger ticket agents of another; the abolition of ticket brokerage; the payment of mileage for cars of private companies or persons; the application of the law to common carriers by water routes. — On February 10, the President signed the proclamation **opening the Sioux reservation** in South Dakota to settlement, and two days later the guards were

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withdrawn, and the expectant crowds of settlers rushed in with a repetition of the scenes witnessed at Oklahoma. The report of the commission which negotiated the cession with the Indians was presented to Congress, with the recommendation of an appropriation of some $1,500,000 necessary to carry out the bargain. The large majority of the Sioux, under the lead of Sitting Bull, declined to take allotments in severalty as allowed by the bill, and went off to their new reservation to be supported in the old way. Complaints were received in March from the Cherokee and Choctaw nations in the Indian Territory that settlers were continually invading their lands from Arkansas. There seems to be considerable activity among the whites who were lately expelled from grazing lands which they had leased from the Indians, but whose rights the government refused to recognize.

THE FEDERAL JUDICIARY. — The Supreme Court has made the following important decisions: March 24, the cases of several railroad companies *vs.* The Warehouse Commission of Minnesota (new Granger cases). Held, that the state law authorizing the commission to determine finally what rates for transportation are equal and reasonable is unconstitutional, as denying due process of law in a question of property right. April 7, Home Insurance Co. *vs.* New York State. Held, that the state tax on corporate franchises, proportioned to the dividends declared, is not a tax on the capital stock, and hence no deduction need be made for capital invested in United States bonds. The state law, therefore, is constitutional. April 14, the Nagle *habeas corpus* case. Held, that acting as body guard to a judge on circuit is a duty of a United States marshal, fairly inferable from the constitution and from the general scope of his functions, and that anything done in the performance of that duty, therefore, comes within the clause of the *habeas corpus* act directing the release of persons in custody for an act done "in pursuance of the laws of the United States." The order of the circuit court is affirmed, by which Nagle, who killed Justice Field's assailant, Terry, in California, was set free. — The federal **circuit court** in Virginia, April 7, passed upon a form of beef-inspection law somewhat different from those declared unconstitutional hitherto. The earlier laws forbade the sale in the respective states of beef that had not been inspected "on the hoof" in the state. The Virginia act requires that all beef killed more than one hundred miles from the place where it is offered for sale shall be inspected by county officers, whose fee shall be one cent per pound. It was decided that this provision also was an encroachment upon Congress' power over interstate commerce, and was therefore unconstitutional. The case was carried to the Supreme Court.

2. Affairs in the States.

November saw four **new states** added formally to the Union by the President's proclamation: North Dakota and South Dakota on the 2d, Montana on the 8th, and Washington on the 11th. — Of the **elections for state officers** held in November, the most striking results were those in Iowa and Ohio. Each of these reversed the long-established practice by choosing Democratic governors. In Iowa, it was the first defeat for the Republicans in thirty years. In Ohio, Governor Foraker, who was candidate for a third term, and who had

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a national reputation, was retired. Ex-Senator Mahone was overwhelmingly defeated in Virginia. New York chose Democratic candidates for minor offices; there was no gubernatorial election. — The closeness of the result in Montana's first state election led to disputed returns, a double legislature, and the choice of two pairs of United States senators, Republican and Democratic respectively. The tenor of the judicial decisions arising out of the matter in the state itself rather favored the Democratic contentions. In the United States Senate, however, on the ground of lack of jurisdiction to go behind the state canvassing board's certificates, the Republican senators have been seated. — The elections in Rhode Island in April resulted in a Democratic victory by a very narrow margin.

ELECTORAL REFORM. — The movement for ballot reform on the line of the so-called Australian system has made some progress; although, on account of the biennial-session laws of many states, the advance has not been so conspicuous as in the preceding winter. The legislature of Washington passed an act on March 19, embodying the Australian system without essential modification. In Iowa, a similar bill passed the lower house, but failed to go through the senate. The same was true in Ohio. A bill was introduced in the New Jersey legislature which, with the main features of the original system, allowed the distribution of ballots outside of the polling places. The official envelope feature was also introduced later, and then the measure became the subject of a wrangle between the two houses that has not yet been terminated. Maryland passed a law, March 29, which embodies most of the features of the Australian system, but which does not apply to the whole state. It has not yet been signed by the governor. In New York, the Saxton bill, embodying all the features most strongly insisted upon by the original friends of the reform, passed both houses of the legislature, but was vetoed by Governor Hill, March 31, on the ground, principally, that the exclusively official ballot provided for involved either a total disfranchisement of illiterates or a denial of secrecy to them, and was therefore unconstitutional. On April 18 a compromise measure was agreed to, allowing a "paster ballot" to be used, thus avoiding the necessity of official aid to illiterates, and substituting for the "blanket ballot" a series of tickets each containing the names of the candidates of a particular party. This bill was duly passed, almost without opposition, in both houses and was signed by Governor Hill May 1. — On April 4, the governor approved a very important measure of electoral reform, the Corrupt Practices Act, containing provisions which have proved very effective in England for obviating bribery and intimidation at elections. The principal clause is that requiring every candidate for office to file, within ten days after the election, sworn and verified statements in detail of his election expenses. Failure to do so entails upon any candidate the penalty of a misdemeanor, and upon the successful one the forfeiture of his office.

THE TRUSTS. — The last six months has revealed a very marked reaction against the movement toward combination of corporations on the trust principle. This has been caused both by a series of hostile decisions by the courts and also by adverse legislation. Combination still goes on, but through the process of regular incorporation rather than mere aggregation under trustees. Important judicial action in the matter has been as follows:

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In California, on January 6, Judge Wallace, of the superior court, declared the forfeiture of the charter of the American Sugar Refinery Company, on the ground that by joining the trust, it had ceased to exercise the functions for which it had been incorporated. Previously to the decision, however, the trust had turned over the property to Havemeyer & Elder, of New York, and this fact was made the basis of an appeal. In New York, shortly after, the receiver of a refinery which had likewise been put into liquidation for belonging to the trust applied for an injunction against a similar transfer of property by the trust in that state, and also against the payment of any dividends in which the defunct company might have an interest. On February 11, Justice O'Brien, of the supreme court, granted the injunction, deciding practically that pending the appeal of the dissolved corporation to the highest court, the trust could dispose of no property and pay no dividends except under order of the courts. In Nebraska, a similar situation has been brought about in connection with a corporation belonging to the Whiskey Trust. After suit to forfeit the corporation's charter had been begun, the trust undertook to transfer the property, but was restrained by injunction, February 4, till the decision of the suit. In Illinois, a much more far-reaching judgment was rendered by the supreme court on November 26. The Chicago Gas Trust Company, a chartered corporation, had bought up a majority of the stock of all the gas companies of that city, thus establishing a monopoly. The court decided that the power to do this was not granted in the charter authorizing the manufacture and sale of gas. The purpose of a corporation's formation must be a legal one; but the suppression of competition is illegal, on grounds of public policy. Such a decision seems to cut off the resource of which the trusts are tending to avail themselves, *viz.* the securing of charters. During the last six months the American Cotton Oil Trust, the Distillers' and Cattle Feeders' (Whiskey) Trust, and the Sugar Trust have either completed or begun their transformation into chartered organizations. This form has been adopted also by most of the new combinations formed, such as that of the smelters and refiners, the starch manufacturers and others. — Projects of legislation against trusts have been introduced in almost every law-making body in the country, including the United States Congress. The difficulties in the way of effective action, however, have in most cases proved insuperable to the law-makers. In Missouri, a very rigorous law, passed some time ago, was put into execution in November. One section was as follows: "It shall be the duty of the secretary of State, upon satisfactory evidence that any company or association of persons duly incorporated and operating under the laws of this State has entered into any trust, combination, or association as provided in the preceding provisions of this act, to give notice to such corporation that unless they withdraw from and sever all business connection with such trust, combination, or association, their charter will be revoked at the expiration of thirty days from date of such notice." In accordance with this provision, the secretary of State, in November, declared the forfeiture of the charters of all corporations, several thousand in number, which had not returned satisfactory answers to a notice previously sent out by him. The matter was brought before the courts, and in March the circuit court at St. Louis decided the law unconstitutional, not as to the main point,

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— the illegality of trusts, — but because the power to forfeit a charter, a judicial act, was vested in the secretary of State, a purely executive authority.

LABOR INTERESTS. — There have been no important events during the last six months in the field of controversy between employers and wage-earners. The wave of agitation seems to have crossed the ocean to Europe and to have left the United States in general calm. The Knights of Labor held their annual convention at Atlanta, in November; but neither their numbers nor their acts indicated any recovery from the relative insignificance into which the organization has fallen. Rather more powerful now seems to be the American Federation of Labor, which held its fourth annual convention at Boston in December. The chief subject of discussion was the agitation for the general adoption of the eight hour working day. A moderate line of action was resolved upon. May 1, 1890, was fixed as the date upon which definite demands for eight hours should be made, and it was determined that strikes should be avoided save as a very last resource. Since not all the trades unions affiliated with the Federation are thoroughly committed to the demand for eight hours, it was determined to begin the agitation in some one favorable trade, perhaps the carpenters', and concentrate all effort there first, gradually extending attention to the rest. An assessment of two cents per member was levied upon the federated union to provide a fund for the support of workmen where strikes should become necessary to enforce the demand. A rather significant paragraph in the report of Samuel Gompers, the president of the Federation, referred to the suggestions that had been made in reference to the combination of the workingmen with certain organizations of farmers. The report declared that investigation had shown the members of these organizations to be mostly employers of labor rather than wage-earners, and stated that combination with farm laborers would be a more appropriate proceeding. As the first of May approached, renewed activity appeared among the trades unions, and especially in the carpenters' organizations demands were made in various parts of the country which indicated a resolution to make the demonstration on that day an imposing and effective one. The day passed, however, without tumult anywhere, though meetings and processions were held in all the large cities.

FARMERS' INTERESTS. — There was held at Montgomery, Alabama, beginning November 13, a **National Farmers' Congress**, consisting of delegates appointed by the governors of over twenty western and southern states. The subjects of discussion were topics of special interest to the agricultural communities of those regions. R. F. Kolb, of Alabama, was chosen president. The resolutions adopted after several days' discussion asked Congress, among other things, to establish deep-water harbors on the Gulf coast, to facilitate trade with South and Central America; to improve navigation on the Mississippi; and to establish a national board of agriculture. Especial interest was manifested in the tariff question, and resolutions were passed by 160 to 89 demanding that while a substantially prohibitory duty is levied on woollen goods and other manufactured products, equally effective duties should be levied on mutton-sheep and wool of all kinds, and calling upon farmers to protest at the polls against the injustice done them by the tariff discrimination in favor of the manufacturers. — Rather more than the usual winter activity of

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the ordinary farmers' organizations in the West has been evident. **The Michigan State Grange**, in December, passed the following resolutions: "*Resolved*, That we consider it for the best interest of the farmer as well as for the entire debtor class of the United States that the whole product of gold and silver from our mines should be utilized by the government as the basis of a legal-tender money currency, by purchasing the entire output of the mines at its bullion value and issuing thereon legal-tender coin certificates at its coin value, but without coinage of either metal until the necessities of the treasury require it. *Resolved*, That the national banking system, so far as it empowers such banks to issue money, should continue no longer than their charters permit, and that we are opposed to the issuing of paper money by any person, bank or corporation other than the United States, and that all such issuance in the future should be prohibited by law." In March **the Farmers' Alliance**, an organization which has made itself especially influential in Kansas, resolved: "*First*, That we demand legislative enactment apportioning the shrinkage of farm values that are under mortgage obligations, by reason of a contraction of the circulating medium or other unjust legislation, between the mortgagor and the mortgagee in proportion to their respective interests at the time the mortgage was drawn. *Second*, That we demand that Congress appoint a committee to investigate the original bill relating to national bonds, for the purpose of ascertaining whether the word 'for' was erased and the word 'after' substituted, making the bonds payable with the premium of 20 or 25 per cent. *Third*, That we demand the election of United States senators by direct vote of the people. *Fourth*, We demand the election of railroad commissioners by direct vote of the people, and that they be given plenary powers to regulate rates as is now the law in the state of Iowa." The decision of the Supreme Court denying to the Minnesota legislature the power to fix railway freight rates excited violent protests from the farmers' organizations. The executive committee of **the Minnesota Farmers' Alliance**, in resolutions demanding the abolition of the court, expressed their feeling as follows: "We call attention to the fact that the citizens of England, from whom we have largely derived our form of government, would not permit for one instant a bench of judges to nullify an act of Parliament. There the people are properly omnipotent, and no civilized government on earth has ever conferred such powers upon any court as are by our constitution granted to the United States Supreme Court. In our anxiety to protect the rights of property we have created a machine that threatens to destroy the rights of man."

TEMPERANCE REFORM. — The legislature of North Dakota passed an act in December carrying out the prohibitory features of the state constitution. The law is very strict, forbidding the sale, barter, or giving away of all intoxicating liquors. For the first offence it imposes penalties of $200 to $1000 fine, and imprisonment not less than ninety days nor more than one year. The second and each succeeding offence is treated as a felony, with punishment by imprisonment in the state prison for a period not exceeding two years and not less than one year. There is a proviso permitting registered pharmacists to sell for medicinal, mechanical, scientific and sacramental purposes. All places where intoxicants are sold are declared common nuisances, and the sheriff of the county in which such places are is empowered to abate them and

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destroy all intoxicants and fixtures found therein. — Governor Goodell, of New Hampshire, felt it necessary to issue a vigorous proclamation, December 28, calling attention to the constant and flagrant violation of the prohibitory laws of that state, and summoning the administrative and judicial officers throughout the state and all good citizens generally to "one supreme effort to close up and suppress every liquor saloon of every description within our borders." — **A Decision of the Iowa Supreme Court**, February 9, sustaining a state law, tends to make prohibition in that state more effective. Difficulty had been found in proving the intoxicating character of beverages sold; and a state law was passed enacting that the possession of a revenue tax receipt from the United States should be considered evidence of guilt, on the ground that unless intoxicating beverages were being sold, no necessity for paying the United States tax would exist. It is claimed that dissatisfaction with this effective legislation had much to do with the unexpected defeat of the Republicans in the November elections. An attempt to introduce a license bill in the legislature in April was defeated by a narrow majority. — On April 28, the Supreme Court of the United States passed upon one feature of the Iowa prohibitory law in what was known as the "**original package case.**" The suit was due to the seizure by the state authorities of beer brought from Illinois and offered for sale in unbroken cases. The decision held that the liquor was a recognized subject of interstate commerce; that therefore its importation could only be prohibited by permission of Congress; that the right to import involved the right to dispose of the article introduced so that it should become mingled with the common mass of property within the region; that this blending was effected only when the original package left the hands of the importer; and that only after that could the authority of the state have unimpeded control. Inasmuch as no minimum limit is set to the size of the original package, this decision is considered a severe blow at all prohibition.

BRITISH INVESTMENTS. — Considerable interest has been excited by the publication of large investments of British capital in the United States in the acquisition of manufacturing establishments. The movement has been in progress for two years, but has not attracted attention till lately. Reports as to the total amount involved have been greatly exaggerated, but $100,000,000 seems certainly to have been invested through the medium of British syndicates. The most valuable properties acquired have been breweries and flour mills. It is the kind of property acquired rather than the amount involved that gives especial interest to the matter; for many times this amount has long been concerned in railways alone. The only noticeable result of the movement thus far is the stimulation of a speculative spirit on both sides of the water which so distinguished an authority as the *London Economist* thinks may lead to harm. The enterprises in general have proved very successful, but in April the syndicate that had taken certain Detroit breweries was obliged to relinquish them to their original owners for lack of profits. The business fell off greatly, owing, it is said, to the patriotic refusal of customers to handle "British beer."

THE RACE PROBLEM. — The legislature of South Carolina in December **repealed the Civil Rights Law**, enacted during the era of Reconstruc-

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tion. The reason assigned was that it prohibited the railroads to furnish separate coaches for the two races under penalty of forfeiting their charters. A law was then passed providing for such separate accommodations. — In consequence of a difficulty between negroes and whites in Barnwell County, S.C., resulting as usual in the violent death of several blacks, many of the latter race in January emigrated in a body to Arkansas. An incident of this "exodus" common to other movements of the same type was the activity of transportation agents in magnifying the attractiveness of the new region. — **A Colored Men's Convention** met at Washington, February 3, and spent several days in discussing the interests of the race. A permanent organization was formed, with ex-Senator Pinchback as president, and an address was issued to the people of the United States, saying among other things: "We regret that there exists in certain parts of our country a condition of affairs which renders it necessary for the colored American citizens to meet in a separate body for the consideration of important questions, national in their character. It is because we have been made special objects of attack and oppression that we are compelled to meet in a separate convention, and suggest ways and means to remedy the evils of which we complain." After a long statement of grievances, the address closes with a petition to Congress, asking that the federal judiciary laws be amended so that it will be possible for the federal courts to organize juries that will be favorable to the enforcement of the laws; that Congress enact into a law some bill similar to the Blair Educational Bill and amend the national interstate law so as to nullify the effects of such state legislation as provides separate cars for white and colored passengers; that a law be passed that will put federal elections under federal control, and also the passage of a law reimbursing the depositors of the late Freedmen's Savings and Trust Company for the losses sustained by them through the failure of that institution. The proposition in Congress looking to the emigration of colored Americans to any other country, or even to any other part of our own country, through governmental aid, is emphatically condemned.

THE MORMONS. — Upon the application of several aliens for naturalization in Utah in November, objection was made against such as were Mormons becoming citizens. After hearing much evidence, especially from apostate Mormons, Judge Anderson decided that an alien who is a member of the Mormon church is not a fit person to be made a citizen of the United States. The evidence, he held, established unquestionably "that the teachings, practices, and purposes of the Mormon church are antagonistic to the government of the United States, utterly subversive of good morals and the well-being of society, and that its members are animated by a feeling of hostility toward the government and its laws." The applications of Mormons for naturalization were therefore denied. This affair was one of the preliminaries to a local election in Salt Lake City on February 10, in which the "gentile" element obtained control of the municipal government. For the first time the Mormons lost their political ascendency in their chief centre. The strict enforcement of the anti-polygamy legislation of Congress had much to do with the result. It is believed that this election marks the turn in the tide which has long been prophesied as a certain accompaniment of the influx of Eastern immigrants. The Mormons, or at least the polygamous section of them,

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received another severe blow in a decision of the United States Supreme Court, on February 3, which affirmed the constitutionality of the law for Idaho prescribing a test-oath as a qualification for the suffrage. The oath declares that the voter is not a bigamist or polygamist, that he does not encourage the practice of polygamy, and that he is not a member of any order which practices or encourages plural marriages. This decision destroys whatever possibility there was that the large number of Mormons who have recently settled in Idaho should secure political control of the territory, and the disappearance of this danger may hasten its admission as a state.

OBITUARY. — November 24, George H. Pendleton, formerly United States senator from Ohio, and recently minister to Germany; December 5, Jefferson Davis, ex-President of the Confederate States; December 23, Henry W. Grady, the eloquent orator of the "New South"; January 2, George H. Boker, ex-minister to Turkey, and known as a poet; January 9, Elbridge Gerry Lapham, ex-senator from New York; January 9, William D. Kelley, the oldest member of the House of Representatives both in years of life and of service; January 15, Walker Blaine, solicitor of the State department; January 19, Orlow W. Chapman, United States solicitor-general; February 17, Benjamin Vaughn Abbott, widely known as a writer on law; March 2, James E. English, ex-governor of Connecticut; March 23, Robert C. Schenck, ex-minister to Great Britain; April 13, Samuel J. Randall, ex-speaker of the House of Representatives.

II. FOREIGN NATIONS.

INTERNATIONAL RELATIONS IN EUROPE. — The Triple Alliance has shown no signs of dissolution. Uncertainty as to the effect of Bismarck's retirement on Germany's foreign policy was removed by the Emperor William's assurance that, so far as the alliance was concerned, it would remain the same. There was much comment in the European press in November on a reported plan of Bismarck to bring about a better **feeling between Russia and Austria**. This project was said to have been the subject of discussion on the occasion of Kalnoky's visit to Bismarck at Friedrichsruh, and between the German and Austrian Emperors at Innsbruck. It was proposed that Austria should withdraw her moral support of Prince Ferdinand in Bulgaria and leave Russia free hand there, short of actual occupation, while Herzegovina and Bosnia should in like manner be left by Russia to Austria. Italy claimed as the price of her consent the cession of the Trentino by Austria. The facts which confirmed the existence of the arrangement were the refusal by Austria to allow the negotiation of a Bulgarian loan in Vienna, the cessation of Russian pan-Slavic agitation in Bulgaria and a movement for the separation of the Trentino from the Tyrol in respect to local government. During the last week of November, however, the Austrian government granted permission for the quotation of the Bulgarian loan and signified its disapproval of autonomy in the Trentino. These steps destroyed the prospect of success of the new understanding and exposed Austria to charges of bad faith in the Russian, German and Italian press. — **The Bul-**

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garian question has continued to attract attention throughout the whole period under review. At the end of December Russia called the attention of the powers to the violation of the Treaty of Berlin in the making of a loan by Bulgaria in aid of some of her railways. The Russian note declared, first, that the Bulgarian government was a mere revolutionary body which Russia could not recognize as having any right to deal with the public property; second, that pledging the revenues of roads in East Rumelia was an infringement of the rights of the Porte, as secured by the Berlin Treaty; and third, that engaging any of the state's income endangered the payment of sums due to Russia for the expenses of occupation after the war of 1877–8. This note was generally regarded as a mere public expression of Russia's hostility to Prince Ferdinand, without any intention of more serious opposition. In February an official claim was put in for the arrears of occupation expenses due to Russia, and the claim was promptly satisfied. The reason for the arrears was that Russia had not been willing for four years to recognize the government so far as to make a demand upon it for the debt. During March the question of Prince Ferdinand's recognition was pushed into the foreground by the action of the Bulgarian government itself. A formal demand for recognition was made upon the Porte, who as formally omitted to take any notice of it. Other powers were sounded upon the question, but the general feeling was that any important modification of the *status quo* would precipitate war, either between Russia and some of the great powers or between Bulgaria and the neighboring principalities. Servia has shown herself entirely under Russian influence. M. Patchitch, president of the Servian Skuptschina, spent some time in St. Petersburg in March, and Prince Nicholas of Montenegro announced his purpose of making a similar visit. An animated quarrel between Servia and Bulgaria arose in March, on account of the action of the Bulgarian agent at Belgrade, in reference to certain Macedonian students whom he considered to be Bulgarians, while Servia claimed them as Servians. War was apprehended for a time, but finally, under Austria's influence, the Bulgarian agent was recalled. — **A difficulty between Great Britain and Portugal** developed in December on account of conflicting claims to territory in southern Africa. Portuguese forces under Major Serpa Pinto invaded territory which had long been a subject of diplomatic contention, and took steps which Great Britain regarded as designed to settle the question by forcible occupation. To the British protests, the Portuguese cabinet responded by arguing the old questions and evaded the demand for the withdrawal of her forces; whereupon Lord Salisbury, on January 11, sent an ultimatum in the form of a dispatch to be transmitted by the Portuguese government to the governor of Mozambique, ordering the withdrawal in unambiguous terms, and directed the British legation to leave Lisbon the same afternoon if the ultimatum was not complied with. Upon this, Premier Gomez, reserving the right under the Treaty of Berlin to have the question settled by arbitration, submitted, under threat of war, to the British demand. An appeal to the Berlin signatory powers for a convention on the matter resulted only in an identical reply declining to interfere. — **Great Britain and France** have been involved again in controversy upon the perennial topic of the Newfoundland fisheries. The question was whether the right to catch and can lobsters along the "French

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shore" was implied in the old treaty right to catch and dry fish. A *modus vivendi* for the coming season was agreed upon by the two governments in March, providing that the canning factories erected last season shall remain, but that new ones may be established only with the consent of both the British and the French naval commander on the coast. — **The Labor Conference at Berlin.** On February 4 the Emperor William addressed to the Imperial Chancellor a rescript in which, after expressing his sympathy for the hard lot of German workingmen and his appreciation of the fact that, on account of the keenness of international competition, improvement could only be hoped for by international co-operation, he directed the Chancellor to ascertain whether the leading foreign powers were inclined to confer on the subjects involved. The responses were favorable, though some modifications in the original scope of the plan were insisted upon by England. On March 15 the conference met, including delegates from Great Britain, France, Italy, Austria, Switzerland, Belgium, Holland, Denmark, Norway and Sweden, and various states of the German Empire. The delegates were without diplomatic character and included many business men and at least one socialist. The body concluded its work on March 29. Its recommendations embraced, in general, restriction and regulation of the kind and hours of work for women and children, careful provisions for the health and security of miners, the prohibition of Sunday labor wherever not absolutely necessary, and such interchange of statistical and administrative information as should enable the governments conferring to work in harmony on all the lines laid down. A noteworthy incident of the conference was the marked attentions offered by the Emperor to Jules Simon, the leader of the French delegation. This fact has been the source of much hopeful speculation as to the future relations of the two nations. It has even been reported, but from Parisian sources, that William favors the retrocession of Alsace-Lorraine. The Emperor's disposition toward general good-feeling manifested itself also in a correspondence with the Pope, in which, while not inviting Leo to send a delegate, William signified his purpose to invite the Bishop of Breslau to participate in the conference, in recognition of the church's interest in the subject. — **The Eight-Hour Demonstration.** At a meeting of socialists in Paris, in July, 1889, it was resolved that an effort should be made for a general and simultaneous demand by the laboring classes all over the world for an eight-hour working day. The trades unions were to be the means for bringing about the demonstration. It was earnestly urged by the leaders that no violence should be used, and moreover, that no general strike should be inaugurated. The day should simply be taken as a holiday, and the special character of the demonstration beyond this should be determined by the circumstances and laws of each particular country. May 1, 1890, was the day appointed. The idea was taken up by the trades unions all through western Europe. As the fixed day approached considerable uneasiness among all the dissatisfied elements of society was noted and the governments showed signs of anxiety lest great disturbances should result. Precautions were taken against revolutionary movements and the precautions were sufficient. Though in almost every large city in western Europe the workingmen's programme was more or less completely carried out, the day passed with only a few minor dis-

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turbances. In several cities anarchistic presses and orators undertook to incite tumult, but all were promptly suppressed. Barcelona, in Spain, and several manufacturing towns in northern France, were the scenes of perhaps the greatest conflicts, but even these were not very serious. — **The Anti-Slavery Conference,** which began its sessions in Brussels in November, has not yet finished its work. The programme it laid out for itself was very comprehensive, involving the consideration of ways and means for striking at the African slave trade in the interior regions where the slaves are captured, on the coasts where they are embarked and in the lands where they are finally sold. Many difficult diplomatic and legal problems have to be solved by the way.

GREAT BRITAIN AND IRELAND. — The general condition of internal affairs in the United Kingdom has been that of peace and quiet. This is especially true in the world of party politics. The usual **party conferences** were held in November and December, the Conservatives at Nottingham and the Liberals at Manchester. At each the question of Irish Home Rule was considered to be the leading issue of the day, but the hopelessness of any definite parliamentary progress in the matter at this time turned the discussions on other topics, chiefly of an administrative or an economical character. The Conservatives endorsed the propositions subsequently embodied in the address from the throne; the Liberals passed resolutions against cumulative voting, and others favoring shorter Parliaments, a direct vote of the people on the liquor traffic and disestablishment of churches in England and Wales. — **The labor troubles** which began with the great dock strikes, settled rather in favor of the workmen on November 4, have continued in various forms ever since. Various sporadic strikes among tailors, bakers, tramway men, *etc.* for more pay and shorter hours were generally successful. A far more serious matter was the strike in December of gas-stokers in London and Manchester, aided by the unions of laborers in the coal trade. The phenomena so familiar on this side of the water all appeared on this occasion, — appeals to public sympathy and support, threats and even violence against "scabs," denunciations of police interference and threats to overturn the whole social fabric. But as the origin of the strike was not so much dissatisfaction with wages and hours as objection to a scheme of "profit-sharing" which seemed likely to interfere with their union, the laborers failed to secure favor with the public and their demands ultimately failed. In the middle of March a widespread strike of coal miners in the north of England for higher wages caused great trouble in all industries requiring a large coal supply. The men were generally successful. — **Mr. Parnell and the *Times*.** The suit for libel against the latter was unexpectedly settled without trial on February 3, by the payment of £5,000 damages to Mr. Parnell and a smaller sum to his private secretary, with all costs of the action. The suit was based upon the publication of the Pigott letters. The *Times* said, in reference to the matter: "After our withdrawal of the letters it was clear we had no legal defence; therefore no alternative was open to us but to come to terms or abide the verdict of a jury. As we had at the outset challenged such action we cannot complain at being taken at our word." **The Parnell Commission,** after sitting 128 days, concluded its sessions on November 22. On February 13

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the report of the judges was submitted to Parliament. The report is voluminous, embracing copious extracts from the evidence and concluding with distinct findings on the nine specific charges of the *Times*. The conclusions may be summarized as follows: *Proved:* That Messrs. Davitt, O'Brien, Dillon and five others joined the Land League in order to use it for bringing about the independence of Ireland as a separate nation; that all the respondents entered a conspiracy to agitate by coercion and intimidation against rents, in order to drive the landlords from the country; that they disseminated newspapers tending to incite to sedition and crime; that they directly incited to intimidation which resulted in crime, and did not denounce this intimidation, though knowing its effect; that they defended persons charged with agrarian crime and supported their families; that they made payments of compensation to persons injured in the commission of crime; that they invited and accepted the assistance of the physical-force party in America, including Patrick Ford and the Clan-na-Gael, and, for the sake of this aid, abstained from condemning that party's acts. *Not proved:* That after publicly denouncing crimes, they led their followers to believe their denunciation was not sincere; that they made payments to incite persons to commit crime; that they were intimately associated with notorious criminals and made payments to procure the escape of criminals from justice; that any of the respondents knew that the Clan-na-Gael controlled the League or was collecting money for the fund. *Disproved:* That the respondents collectively were in a conspiracy aiming at the absolute independence of Ireland; that they were insincere in denouncing the Phœnix Park murders; that they directly incited to crime other than intimidation; that none of them expressed *bona fide* disapproval of crime and outrage. The specific charges against Mr. Parnell, that he was privy to the doings of the Invincibles at the time of the Phœnix Park murders and gave financial assistance to one of them to escape to France, are declared disproved. As to the special charges against Mr. Davitt, it is found that he was a convicted Fenian; that he employed for agrarian agitation money that had been contributed for purposes of outrage and crime, *viz.* the "skirmishing fund"; and that he was in close association with the physical-force party in America and was mainly instrumental in uniting that party with the American Parnellites. Both parties to the controversy profess to be satisfied with the verdict. The *Times* points to the serious charges declared proved and the long array of not-proved items which it considers as practically decided against the defendants. The Parnellites, on the other hand, declare that while they never denied what is found proved, on the personal charges which alone were important, their leader's triumph is absolute. — **Parliament** met on February 11. The Queen's speech announced friendly relations with other powers and further improvement in the condition of affairs in Ireland, permitting a restriction of the area of coercion. Propositions were promised for land-purchase by Irish occupiers, for local self-government in Ireland and for assisting the people of the poorer districts. For Great Britain, bills were promised for facilitating the transfer of land and the redemption of tithes, for improving the condition of the Scotch crofters, for ascertaining the liability of employers for accident to workingmen and for sanitary

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improvement. **The opening debates** turned almost exclusively on Irish affairs. A motion by Sir William Harcourt declaring the *Times* guilty of a breach of privilege in publishing the forged Pigott letters was voted down, though Mr. Smith, the Conservative leader, expressed the government's conviction that the forgery had been proved. Mr. Parnell moved an amendment to the address, on February 14, asking for the repeal of the coercion act. In the discussion of this, it was admitted on all sides that Ireland was in a state of great comparative tranquillity; but the fact was attributed by the Liberals solely to the two successive good harvests, and by the Conservatives solely to the policy of the government. The amendment was rejected on the 18th by 307 to 240. After much nagging by the Parnellites, the government leader in the House, on March 3, moved the adoption of the Parnell Commission's report, with thanks to the judges for the justice and impartiality of their proceedings. Mr. Gladstone proposed an amendment, reprobating the calumnious charges made against members of the House, and while expressing satisfaction at the exposure of evil-doers, regretting the wrong inflicted and the loss endured through those acts of flagrant iniquity. The general objection of Mr. Gladstone to the adoption of the report was that, while it was written in perfect honor and good faith, the judges exhausted all their efforts in pointing out the villanies of certain admittedly bad Irishmen, and omitted entirely the proper condemnation of that by no means lesser villany — the use of forgery to blacken the character of political adversaries — through which alone the commission had been called into existence. Mr. Gladstone's amendment was rejected by 399 to 268. On March 11, after Lord Randolph Churchill had created a sensation by a violent attack on the government for its course in establishing the special court, the report of the commission was adopted. The House of Lords adopted the report on the 21st. — On the 24th, the government's **Irish land purchase bill** was introduced in the Commons by Mr. Balfour. It provides for an advance of sums up to £33,000,000 for the acquisition of land by Irish tenants from landlords who are willing to sell, subject to the control of a reorganized land commission. Repayment to the government is to be by 4 per cent annuities running for 49 years. The securities against loss to the government through default of the purchasers are carefully arranged and include £240,000 yearly contributed by the imperial treasury to local Irish purposes and ¼ per cent charged on the tenants, besides a number of contingent sums; that is, the Irish local taxpayers are ultimately responsible. The landlords are paid in 2¾ per cent government stock. There are provisions in the bill for various expedients to relieve the "congested districts." In the debate on the second reading Mr. Parnell opposed the bill as not a satisfactory solution of the land question. The maximum sum to be advanced he showed was ridiculously inadequate to a complete transfer of Irish land to the tenants. It would simply enable some of the richer landlords to sell out and leave Ireland. He suggested that the act be limited to tenancies not exceeding £50 valuation, and that the advances should be directed not to the purchase of the land, but to enabling the landlords to reduce rents. Other objections, advocated by Mr. Gladstone and his followers, were that the securities involved burdens upon the Irish county taxpayers without any reference to their will, and that neither this nor any other

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measure could be successful till some system of home rule should enable the Irish people to give their consent. The bill passed the second reading May 1, by 348 to 268, Mr. Balfour intimating a possibility that some of Mr. Parnell's suggestions might be adopted later.— **The budget** was presented to the Commons by Mr. Goschen, April 17. It showed a surplus of £3,221,000, due mostly to increased consumption of spirituous liquors. Various small reductions of taxation were proposed, including that of 2*d.* per pound on tea. — **Affairs in Ireland** have not been especially exciting. The new Tenant's Defence League has prospered fairly among the farmers and has afforded an opportunity for meeting and agitation in counties where the National League is prohibited. Archbishops Walsh and Croke have come out strongly in support of the new league. The fortnightly meetings of the National League at Dublin have been but thinly attended and the cash receipts have been small. An extraordinary state of affairs prevails in the town of Tipperary. Nearly the whole of the town is owned by Mr. A. H. Smith-Barry, who has waged a vigorous war of eviction against the plan of campaign on an estate near Youghal. In sympathy with those evicted, practically all his Tipperary tenants, including merchants, shopkeepers and professional classes, refused to pay their rents and left their homes and places of business. These people were in general fairly well-to-do, and under the auspices of the national organization they began the creation of a new town in the immediate vicinity of the old. There have been no serious disturbances here and the buildings of New Tipperary are now about ready for occupation. The market was opened with great ceremony on April 12. Mr. Smith-Barry is also carrying out an energetic system of eviction at the town of Cashel, whose people assume the attitude of the Tipperary men. — **The new lord-lieutenant**, the Earl of Zetland, took up his residence in Dublin, December 15. — The Cork Board of Guardians was dissolved by the Local Government Board in January, on account of its irrepressible inclination to devote its meetings to political discussions involving abuse of the government rather than to the legitimate duties of its position. — **Died**: January 14, Baron Napier of Magdala, the distinguished soldier of Indian and Abyssinian wars; February 19, Joseph G. Biggar, Irish member from Cavan, who in 1875 began the policy of obstruction in the House of Commons which contributed so much to the development of Parnellism.

THE BRITISH COLONIES. — **Canada** has found in her **race and religious troubles** the chief source of political interest. In the province of Quebec, Minister Mercier has balanced his great Catholic victory in the Jesuits Estates Bill by a small concession to the Protestants in the matter of higher education. But bitterness between the sects is still intensified by questions of church taxation. The Dominion Parliament at Ottawa opened its session on January 16. The governor-general's speech took strong ground against the pretensions of the United States in the Behring Sea matter. On February 12 the discussion of an affray between Catholics and Protestants in a town near Ottawa caused a violent scene in the House of Commons. A few days later a motion to abolish the French language as conjointly official with the English in the Northwest Territories led to an exceedingly bitter debate lasting several days. The government finally patched up and carried a compromise

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which, without either affirming or denying the French claims to the use of their language under the federal compact, provided for the maintenance of both languages in the courts and in the laws, while leaving the territorial legislature its own discretion as to its records and proceedings. In Manitoba, at the same time, the rapidly growing English interest showed its strength by the passage of an act by the provincial legislature abolishing the official use of French in the province, and by the introduction under government auspices of a sweeping measure to do away with the Catholic separate schools. New difficulties are threatened in the Northwest Territories by a growing influx of Mormons, fleeing from the severe legislation of the United States. A large colony of them settled in Alberta under solemn pledges to the Dominion government not to practise polygamy. There is no law against this in the Dominion, and under stimulus of reports that the Mormons are violating their pledges, an agitation has developed to induce Parliament to legislate in the matter. — **Tariff legislation** was under discussion in the Dominion Parliament all through April, and the general tendency of the government's policy is toward higher duties on agricultural products. The opposition insists that such a tendency will provoke dangerous retaliation by the United States, against whose products it is mainly directed. Reciprocity in raw materials is advocated by the Liberals, but without much prospect of success. The *modus vivendi* in reference to the rights of American fishermen was renewed for a year by an act passed April 29. — In **Newfoundland** a new ministry assumed control in December. The main issue that brought them in was connected with the quarrel with the French fishermen on the coast. The *modus vivendi* arranged by the British government with France is violently disliked by an influential element of the people, and annexation to the United States is openly discussed. — **A native congress in India** was held at Bombay at the end of December, with some 2000 delegates. Mr. Bradlaugh was present from England. The congress adopted resolutions demanding many administrative reforms and also representative government. The Parsees and Mohammedans stand aloof from the movement. — **Australian Federation** was discussed at a meeting of delegates from the various colonies in February at Melbourne. Resolutions were passed expressing the conviction that union in the near future would be advantageous to all, and providing for future conventions on the subject. The debates showed that tariff rivalries were somewhat of an obstacle to federation. New Zealand is willing to join only for common defence.

GERMANY. — **The Emperor's tour** through southern Europe terminated November 15. Among its later incidents were a visit to the Sultan at Constantinople and a conference with the Emperor Francis Joseph at Innsbruck. **The session of the Reichstag** continued till January 25, when the body closed its term. Most interest in its proceedings attached to **the anti-socialist bill** of which the government demanded the renewal as a permanent measure. The most arbitrary powers bestowed by the bill, especially the right to expel dangerous socialists at discretion, met with opposition by the National Liberals, the chief element in the government's majority, and the expulsion clause was defeated 166 to 111. As the government declined to push the measure without this clause, and as the Chancellor brought no personal

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effort to bear in the matter, the bill was finally rejected by Conservative votes. — The first in a series of events which have attracted the attention of all the world to Germany was wide-spread **labor troubles** among her miners, beginning in the early part of December. A period of considerable disorder followed, contemporaneous with the strikes in England, Belgium and other parts of Europe. On February 4, the labor problem acquired a new importance through the issue by the Emperor of two **rescripts in reference to workingmen's interests.** One, addressed to the Imperial Chancellor, directed the summons of the international conference at Berlin, elsewhere referred to; the other, directed to the Prussian minister of Public Works, Commerce and Industry, after expressing the King's high sense of the importance of governmental concern in the laborers' welfare, declared the necessity of a wider extension of the workingmen's insurance system and of a number of regulations for securing the health, morals and general economic advantage of the laboring classes. He suggested also the authorization of workingmen's representatives, to express the wants and wishes of their brothers and to treat with employers about common concerns. A council of state was then summoned to meet under the Emperor's presidency for the consideration of all the matters referred to. These papers created a great sensation in both official and non-official circles. Rumors of a disagreement between Prince Bismarck and the Emperor were based upon the absence of the former's counter-signature from the royal document. It was quite generally felt, at all events, that the approaching **general elections for the Reichstag** and the energetic electioneering of the Socialists had some influence in stimulating this sudden manifestation of imperial socialism. The elections were held February 20, and the result was the complete overthrow of the National Liberals, — upon whom, in alliance with the Conservatives, the government's majority had been based, — and enormous gains by the Freisinn and Socialistic groups. The official record of the composition of the Reichstag is as follows: Conservatives, 72; Imperialists, 19; National Liberals, 43; Freisinnige, 67; Centrists, 107; Socialists, 35; Volkspartei, 10; Poles, 16; Guelphs, 11; Reichslanders, 10; anti-Semites, 5; Dane, 1; no party, 1. The Centre (Ultramontane) alone can form a majority in conjunction with the faithful Conservatives. In the popular vote, the most striking feature is the advance of the Socialists from 10.1 per cent in 1887 to 19.08 per cent of the total — a gain in round numbers of 600,000 votes. Evidences of negotiations with the Centrist leader, Herr Windthorst, to secure his support for the government were manifest immediately after the result of the elections was known. It seems most likely that in connection with these negotiations arose the circumstances which were the immediate occasion of **the retirement of Prince Bismarck.** The Chancellor's resignation was accepted by the Emperor on March 20, and General George Leo von Caprivi was appointed his successor both as Imperial Chancellor, as president of the Prussian ministry, and, after a short interval, as Prussian minister of Foreign Affairs. No official publication of Bismarck's reasons for resigning has been made. The Emperor's very eulogistic letter accepting the resignation made no allusion to them save to declare that they precluded all hope of a change of the Chancellor's resolution. From statements in the *North German Gazette*, hitherto Bismarck's organ, it would

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seem probable first, that the Emperor's labor policy was *not* a source of disagreement with the Chancellor; second, that the Emperor's energetic and headstrong disposition and his conviction of a personal responsibility, to be sustained by personal attention to all governmental affairs, had been for some time a source of dissatisfaction to Bismarck; third, that the latter definitely determined to resign because William resolved to revoke the Prussian ordinance of 1852 requiring that all communication between the King and his ministers should be through the president of the ministry, — an ordinance which in practice has made the minister-president alone directly responsible to the King; and fourth, that the immediate occasion of the final rupture was a demand by William for information as to the nature of an interview which Bismarck was learned to have had with Windthorst, the Ultramontane leader in the Reichstag, — a demand which led the Prince to decline to submit his intercourse with the members of the house to any control. The Emperor's letter accepting Bismarck's resignation expressed the deepest gratitude for the Prince's work in behalf of Germany and the Hohenzollerns, and conferred upon him the title of Duke of Lauenburg and the rank of field-marshal general in the army and colonel general of cavalry. On March 29 the ex-Chancellor left Berlin, amid a great demonstration of popular love, and retired to his country seat at Friedrichsruh. Count Herbert Bismarck followed his father into retirement, being succeeded in his place as imperial foreign secretary by Baron Marschall von Bieberstein. — Chancellor von Caprivi made his first official public appearance at the opening of the Prussian Landtag on April 15. In addition to the usual sentiments of patriotic devotion to Prussia, Germany and the Hohenzollerns, his speech contained a high eulogy of his predecessor, and expressed the belief that under the new régime there would be much more room for the working of individual effort in the ministry than was possible, in the nature of things, under the presidency of so powerful a personality as that of Prince Bismarck. The intimation in this statement was understood to be that the responsibility of the various ministers to the King directly, instead of through the president of the ministry, was to be the rule in the future.

AUSTRIA-HUNGARY. — Cisleithan interest has been chiefly centred in the **race antagonism in Bohemia.** The energetic anti-German propaganda developed by the Czechs in the Bohemian Diet, culminating in the demand that the Austrian Emperor should be formally crowned King of Bohemia, resulted in the withdrawal of the German delegates from the legislature altogether. In December the matter came up in the Reichsrath through an interpellation as to the government's position on the subject. Count Taaffe announced that no change in the existing constitution of Austria and no coronation at Prague were contemplated by the ministry, but that on the other hand the discussion of constitutional changes in the Bohemian Diet did not seem to involve anything that called for censure. This answer was designed to placate the Germans without offending the Czechs. The result was the continuation of the violent manifestations of race animosity throughout Bohemia and serious threats of a withdrawal of the German members from the Reichsrath. Finally the Emperor by his personal intervention brought about a reconciliation-conference at Vienna between the

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German and the Czech leaders. The conference sat from the 4th to the 19th of January. Its conclusions were accepted by all parties, though the "Young Czechs" considered themselves betrayed to their German enemies. The agreement involves a host of details in reference to educational, religious, commercial and electoral administration in Bohemia, devised with the general purpose of assuring to the German minority the maintenance of their nationality in the midst of the Slavonic majority. Upon the announcement and execution of the plans proposed, the German members resumed their seats in the Diet. It is considered that the concessions thus made to the German element were all that saved a crisis in the Austrian ministry and the downfall of Count Taaffe. — In Hungary the chief fact of interest has been the **resignation of Herr von Tisza**, for fourteen years at the head of the ministry. This event was the result not of any defeat of the Liberal party, but of long-standing personal rivalries in the cabinet itself. It seems that the proposition made to re-naturalize Kossuth, which the latter promptly repudiated, precipitated the crisis. Count von Szapary, formerly minister of Agriculture, succeeded Tisza and the other ministers retained their positions. — Count Julius Andrassy, the Hungarian ex-premier of the empire, died February 18.

FRANCE. — The legislature assembled on November 12. In **the new Chamber of Deputies**, after the validation of elections had proceeded far enough, M. Floquet was elected president by an overwhelming majority. Premier Tirard announced his policy to the chamber on the 19th and received an emphatic vote of confidence as against a Boulangist motion for revision of the constitution. The indications at this time were quite favorable to a united Republican majority in support of the government. The royalists were evidently divided as to whether they should cling to the shattered remnants of Boulangism or recognize the republic as hopelessly a fact. Out of this division of opinion arose weakness in action. — **The position of the Boulangists** was not allowed by the government to be improved over the plight in which the elections left them. A demonstration organized in Paris for the day on which the chambers met was summarily suppressed by the military. In authenticating elections, the chamber rejected without mercy claimants who had followed the aspiring general. A critical point was reached when the Montmartre election was taken up. Boulanger himself had received the majority of votes for this seat, but as he was ineligible, the question was whether a new election should be ordered or the seat should be given to his Republican adversary, M. Joffrin. Not till the 9th of December was the latter course finally adopted. The decisive reason for this was that Boulanger had announced his intention to stand again if a new election were ordered, and the government was unwilling to permit a revival of his agitation. The Boulangists made a great outcry at the action of the chamber and their representatives created a scandalous scene when M. Joffrin undertook to speak in the chamber in January. Other manifestations of this sort led to the adoption, February 25, of a rule authorizing a prolonged suspension of any member not promptly heeding the presiding officer's calls to order. — The Boulangists had scarcely been brought firmly under control when the government found itself called upon to deal with a royalist demonstration. On February 7 the

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Duke of Orleans, eldest son of the Count of Paris, was **arrested at the capital.** His offence was the violation of the law forbidding any of the members of his family to enter French territory. It was at first feared that he had sought to bring about a *coup d'état*, but he himself claimed that he only came to fulfil the term of military service due from every Frenchman. His patriotic purpose availed him little; for he was promptly tried, convicted and sent to prison for two years. It is expected that he will soon be pardoned. — Evidences of division among the Republicans began to appear quite clearly in February and the old dissension between the radical and the moderate wings, together with differences of a personal nature with the premier, led to the resignation on March 1 of M. Constans, minister of the Interior. He was succeeded by M. Bourgeois, a more advanced radical; but it was felt that the government was weakened and on March 13 occurred **the fall of the Tirard cabinet.** The occasion was an adverse vote in the Senate on the subject of a commercial treaty with Turkey. The true cause, however, lay deeper and must be sought in those personal and group influences which it was hoped the Boulangist danger had frightened out of the Republican majority. M. de Freycinet undertook the **formation of a new ministry**. The novelty was chiefly in the assignment of the positions; for most of the former ministers remained in the cabinet. M. Constans resumed his old place in the Interior department and M. Bourgeois assumed the portfolio of Public Instruction. Premier de Freycinet announced his policy on the 18th. It included especial attention to the protection of agricultural and laboring interests, particularly in the commercial readjustment required by the expiration of several treaties in 1892.

RUSSIA. — Until the last half of the six months under review affairs within the Czar's dominion were apparently calm. In February, however, reports appeared in the foreign press of **commotions among the political exiles in Siberia.** In the spring of 1889 an affray occurred at Yakoutsk in which several exiles were slain by the soldiery and more were executed. The accounts from Nihilist sources represent the cause as lying in the atrocious cruelty of the authorities, which provoked the prisoners to armed resistance. In November, the women political exiles at Kara took umbrage at the conduct of the authorities and resorted to a "hunger-strike," or voluntary starvation. Thwarted in their purpose by violence, one of them assaulted the governor and was in consequence flogged so that she died. Others committed suicide by poison, and some of the male exiles did the same. The circumstances of these affairs have excited much feeling outside of Russia; inside, no public reference to them has been tolerated. Whether or not connected with these events is not clear, but at all events a very general **disturbance among the students** at the universities in European Russia manifested itself in the last week of March. The institutions at Moscow and St. Petersburg were closed by the authorities and many of the students were arrested. Reports are conflicting as to the origin of the troubles, but it is said that revolutionary doctrines were concerned. — It was rumored that an unsuccessful attempt to murder the Czar was made about April 1. — Much ill-feeling has been manifested in the Baltic provinces and Finland on account of very pronounced measures adopted for the thorough Russification of those regions.

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ITALY. — **The Parliament** was opened by the King in person on November 25. He announced a policy of social, educational and commercial reforms without increase of taxation. In December, in accordance with the King's announcement, the law imposing differential duties on French products was repealed, in order to terminate the commercial war with France. On December 20 a bill passed secularizing the *opere pie*, charitable foundations hitherto under control of the church, and possessing an aggregate income of $30,000,000 per annum. This act was bitterly opposed by the clericals, who stigmatized it as barefaced robbery. They charged that the $60,000,000 deficit in the budget was the real motive that led the government to confiscate the charities. The law formed a prominent feature in the complaints contained in the Pope's addresses later. — Prince Amadeus, Duke of Aosta, brother of King Humbert and formerly King of Spain, died January 19.

SPAIN. — **A cabinet crisis** extended over practically all the first half of our period. It became acute at the resignation of the ministry on January 3. Premier Sagasta failed in his undertaking to form a new cabinet. A temporary truce was caused by the very serious illness of the infant King during the second week of January, which distracted his regent mother's attention from public affairs. Upon his recovery, an attempt of Senor Martinez to form a conciliation ministry failed and Sagasta finally took the reins again, but with a cabinet consisting wholly of his own faction of the Liberals. The main subjects which were prominently before the Cortes were the budget and a proposition for universal suffrage. The Liberals were not united on either, and the Conservatives were not strong enough to profit by this fact. The budget showed the usual deficit, about $20,000,000. — Considerable activity and enthusiasm were manifested among the republicans upon the announcement of the Brazilian revolution; and when the death of the King seemed probable, the Carlists made some demonstrations in the north.

MINOR EUROPEAN STATES. — In **Portugal**, the new King, Carlos I, was proclaimed with due ceremony, December 28. The news of the Brazilian revolution created considerable republican agitation throughout Portugal and fears of an insurrection were rife for many weeks. England's action in reference to Portugal's movements in Africa created a wide-spread and violent expression of popular feeling in January against the English. Mobs in several cities attacked the British consulates and a boycott was organized against wares from England. The Gomez ministry resigned and a new cabinet was formed under de Serpa Pimental. A further modification of this body was effected April 2. — **The Porte** issued a firman granting amnesty to the Cretan insurgents, December 5. Many of the leaders were excepted from pardon, but the firman decreed many reforms in the administration of Crete. Moussa Bey, who was charged with barbarities to Christians in Armenia, was privately tried — at least so the Turkish government said — and acquitted. A law was promulgated on December 30 containing elaborate regulations for the prohibition of the slave trade in the Ottoman Empire and its dependencies. — The government of **Servia**, on December 10, expropriated the salt monopoly held by the Anglo-Austrian bank. Some friction with Austria-Hungary was the result. The Belgrade cabinet was reorganized

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March 28, with General Grouitch as prime minister. — **Bulgaria** has been chiefly interested in avoiding the snares of Russian intrigue. On February 2 a plot was detected, headed by an army officer, Major Panitza, for the purpose of seizing and making away with Prince Ferdinand. Evidence is said to have been discovered connecting Russian officials with the affair. Early in March, the Bulgarian government made a general demand upon all the leading powers for the recognition of Prince Ferdinand. This movement was understood to have reference rather to party politics at home than to any hope of success abroad. M. Stambouloff, the prime minister, wished to cultivate patriotic feeling in view of approaching elections. — The Russophil Catargi cabinet in **Roumania** was succeeded on November 15 by one more to the King's taste, under General Manu. — In **Denmark**, Minister Estrup, hopeless of getting his budget passed, dissolved the Folkthing, January 2, and ordered new elections for the 21st. The results showed very little change in the great opposition majority which has so long annoyed him. After a renewed conflict with the new chamber, the legislature was prorogued April 1, and the collection of the revenue was ordered by royal decree. — **Belgium** experienced during the winter the troubles of prolonged and general strikes among the miners, especially in the region of Charleroi. These were simultaneous with the labor troubles in Germany. The strikers were generally successful in obtaining at least a part of their demands.

AFRICA. — **The General Assembly of Egypt** met December 15 to consider financial reforms made possible by the extraordinary fact of a surplus of £150,000 in the budget for 1890. A decree was approved abolishing to a great extent the *corvée* and substituting a land tax. The proposition to convert a five per cent into a four per cent loan failed through the refusal of the French government to give its consent. This consent was promised on conditions looking to an early or at least a definite date for the withdrawal of the British troops — conditions which Great Britain rejected. — The rivalry among the European powers for territory in all parts of Africa has continued with some few striking incidents. **Stanley** and Emin Pasha reached the coast at Zanzibar, December 4. The complete story of their proceedings reveals the probability that, for a generation at least, the equatorial provinces of Africa, if not the whole Soudan, are lost to civilization. The Mahdists have established an exceedingly powerful empire there. On the eastern coast, about Zanzibar, **German interests** have prospered well under the direction of Major Wissmann. The chief Bushiri, who was the principal obstacle to German progress inland, was captured and put to death December 15. Mwanga, the King of Uganda, on the shores of Victoria Nyanza, has won back his power, and has overthrown the Arab and anti-Christian party which drove him from the region. This revives the possibility of a railroad from the coast to the lake. Emin Pasha entered the German service in East Africa early in April, and immediately prepared to lead a large expedition inland to the great lakes. The English were exceedingly angry at what they deemed his ingratitude; for the rivalry between German and British interests in this region is very keen, and the English East African Company had been trying to secure him. — **A sharp collision between English and Portuguese** claims to territory in the Zambesi region occurred in November. The

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Portuguese Major Serpa Pinto, undertaking to assert his authority along the upper course of the Zambesi, came in conflict with natives claimed to be under British protection. Though he easily conquered them, the intervention of the British government forced him to withdraw. [For the diplomatic negotiations, see **International Relations**.] The region at stake is the great interior territory between the Portuguese coast settlements about Mozambique on the Indian, and those about St. Paul de Loando on the Atlantic Ocean. A British South Africa Company was chartered in December to exploit this region. It is continuous with the territory under British influence north of the Transvaal, and extends to the shores of Lake Nyassa. — **The Italians in Abyssinia** have made enormous progress. Early in November a protectorate was declared over a considerable length of coast, and about the same time a treaty was made with Menelik, guaranteeing Italy's support against Ras Alula, his rival for the throne and an old enemy of the Italians. A month later Ras Alula was totally defeated, and Menelik, as recognized King, acknowledged the protectorate of King Humbert's government over all Ethiopia. This puts Italy in a very prominent position among the powers in Africa and opens up possibilities of successful attack from the east on the Mahdists at Khartoum. A tendency among the English to resent the great progress of Italy in this region was met by a declaration of Premier Crispi, March 6, that the two governments were in cordial agreement about African affairs. — **The French in Dahomey** were attacked by the native King in the first week in March. The King refused to recognize the French protectorate over the coast. Desultory hostilities have been in progress ever since, the French government not wishing to make any positive conquest of the territory.

SOUTH AMERICA. — By far the most important political event on this continent during the last six months has been **the revolution in Brazil.** There had long been a strong republican sentiment in the empire, but it was generally believed that the existing constitution would last as long as Dom Pedro II lived. The establishment of the republic was a complete surprise and seems to have taken place rather as the development of a military mutiny than as the result of a deliberately planned *coup d'état*. On the morning of November 15 the imperial ministry undertook to carry out a plan of transferring certain disaffected regiments of the regular army from Rio Janeiro to distant parts of the empire. The troops refused to obey orders and were headed in their mutiny by General Deodoro da Fonseca. The other regular forces in the capital joined with the insurgents, as did also the *quasi*-military bodies of police and firemen. In a short time the ministers found themselves helpless and sent in their resignations to the Emperor. Dom Pedro, having been summoned in haste from his suburban palace at Petropolis, undertook to form a new ministry, but without success. Meanwhile the insurgents made him a prisoner in his city palace and cut off all intercourse with the outer world. The leaders of the rebels then, in conjunction with the chief republicans of the capital, organized a ministry of their own and proclaimed the republic. On the 16th Dom Pedro was notified that the presence of himself and family in the country was incompatible with the new order, and at three o'clock in the morning of the 17th the whole imperial family was put on board a steamer for Portugal, which immediately left the port under escort of a man-

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of-war. No blood was shed in the affair except in the case of Baron Ladario, the minister of Marine, who was severely wounded in attempting to quell the mutiny. The provisional government was organized as follows: Fonseca, President; Loba, Interior; Bocayuva, Foreign Affairs; Barboza, Finance; Campos Salles, Justice; Constant, War; Vanderholtz, Marine; and Ribero, Agriculture. A decree was issued by this body proclaiming the republic under the name of the United States of Brazil, the former provinces to form the states and to be united by federation. Governors duly appointed for the states were directed to preserve order and to administer local affairs, pending the action of a constituent assembly which should provide finally for the new government. With only a slight disturbance in a single city, the provinces gave in their adhesion to the new régime. Foreign governments were assured that the engagements of the imperial government would be faithfully maintained, and by the end of November the most perfect outward tranquillity prevailed in both the internal and external affairs of the transformed nation. For the elections under the republican system the provisional government, on November 21, decreed that the suffrage should be extended to all citizens able to read and write. Dom Pedro reached Lisbon with his family December 7, and was warmly received by the Portuguese court. He declared his willingness to return to Brazil if summoned, but renounced all intention to favor movements for restoration by force. The cash donation which the republicans offered him he declared he would not accept. — On December 21, a decree was issued by the provisional government fixing the date of the elections for the constituent assembly for September 15, and the meeting of that body for November 15, 1890. The same decree revoked the cash grants to Dom Pedro and also his civil list, and forbade the return of any of his family for two years. In January the separation of the church from the state was decreed. Both federal and state authorities were prohibited to do any acts establishing any religion, and the patronage, resources and prerogatives of all religious institutions were extinguished. — The ex-Empress of Brazil died suddenly at Oporto, December 28th. — **Peru** concluded in January a settlement with her English bondholders on terms which, if fairly carried out, promise much for the future prosperity of the country. To cancel the bonds, the government turned over to the holders, represented by a New York firm of contractors, all the railways of the state for a term of sixty-six years, and the product of its guano beds up to 3,000,000 tons. Extensive privileges are conceded to favor the development and improvement of the railroads and to facilitate the exploitation of the guano deposits. The government pays in addition £80,000 annually for thirty-three years. — **The Argentine Republic** has been suffering from a trying financial crisis. Depreciated paper currency and wild-cat banking are reported to be the causes of the difficulty. The long-standing *Missiones* boundary difficulty with Brazil and Uruguay was definitely terminated by treaty in January. — **The Panama Canal** has been made the subject of a thorough examination by a committee of French engineers, whose conclusions will definitely determine, in all probability, the question of its completion.

MEXICO AND CENTRAL AMERICA. — As regards its general **social and industrial development, Mexico** seems to have entered upon a definite career of progress. A congress of delegates from the different states

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met at the capital in December on invitation from the President, and spent some days in discussing projects for the improvement of the educational facilities of the nation. Very great activity has been manifested in chartering banks and railways. Foreign capitalists have competed hotly for promising concessions. A contract was signed in November by the government providing a subsidy of $50 per head for every able-bodied negro colonist from the United States settled permanently on public land in certain designated Mexican states. Congress met April 1. The message of President Diaz reported a good state of the finances and general internal prosperity. — The plan of **Central American Union**, formulated by a convention of delegates from the five states at San Salvador in October, was approved in the course of the next two months by Guatemala, Honduras and San Salvador. Costa Rica is confidently expected to give her assent through her congress in June. The plan provides for the preliminary steps toward a permanent federal union, by constituting a common executive for the administration of all the foreign affairs of the five states. The executive consists of a chief, chosen annually from each of the republics in turn, and a council of five, one member from each state. The sovereignty of each republic in domestic affairs is retained, but each is so to modify its laws in reference to commerce and other common interests as to favor ultimate union. It is provided that the plan shall go into effect between those ratifying it on the 15th of September, 1890, and that by 1900, if not before, a constituent assembly shall be summoned to complete the central organization by the addition of a legislature and a judicial body. Nicaragua is inclined to oppose the project on account of the fear that she may have to share with the rest some of the special advantages she expects to gain from the canal. — **The Nicaragua Canal** is reported to be making good progress, though the work as yet is in the preliminary stages.

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